



CITY CLERK

Memo

To: City Council
From: Julia Moss, City Clerk
Date: April 11, 2023
Re: Removal of Item 9B

Staff is removing Item 9B from the April 13, 2023, City Council agenda at the request of the appellant. The attached letter was received from the appellant's legal representative on April 10, 2023.

This public hearing will be rescheduled pending the arbitration between the appellant and their landlord, and appropriately re-noticed.

Moss, Julia

From: James Anthony <james@anthonylaw.group>
Sent: Monday, April 10, 2023 5:13 PM
To: Samantha Zutler; Moss, Julia
Cc: Burke, Tamar M.; Hannah Young; Jamila Colbert; Drew Sanchez; Firehouse Brew & Grill; RMendoza@bwslaw.com
Subject: [PDF] Urgent: Request for continuance: City of Capitola CC meeting of 4/13/23: Capitola Bar & Grill's Appeal of Entertainment Permit Denial
Attachments: Notice of Request for Emergency Arbitrator.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Madam Clerk and Esteemed Counsel:

My firm represents the Appellant Capitola Bar & Grill (Michelle and LaSalle Strong), CB&G, in this appeal and in their pending JAMS arbitration with the landlord La Serena Properties (Steve Yates).

Last week Thursday 4/6/23 at 11:00 am CB&G had a hearing before an emergency arbitrator seeking the equivalent of a preliminary injunction seeking an emergency arbitrator order to the effect that:

- 1) The Respondent Landlord is deemed for all purposes to have irrevocably consented to live music entertainment under the lease agreement, absent a showing of nuisance in fact, proven in arbitration;
- 2) The Respondent Landlord must sign any documents reasonably required to document that consent to live music entertainment as needed.

See attached *Notice of Request for Emergency Arbitrator and Emergency Injunctive Relief [JAMS Rule 2(c)]* (additional pleadings and JAMS documentation available on request).

At the close of the hearing mid-day on 4/6/23, the Arbitrator Judge (ret.) Glenda Sanders, said that she hoped to have her ruling out by the end of the week. So we anticipated getting the decision last Friday or today Monday 4/10 at the latest. But in the email below, JAMS informed us at 3:55 pm today that the ruling will be made next week.

We had hoped to have the arbitrator's ruling in time for the City Council appeal hearing currently scheduled for this Thursday 4/13/23. It is our position that if CB&G obtains the requested relief and the landlord is legally deemed to have consented to live music, the City Council hearing is unnecessary because the only basis for denial for the permit in the staff report is the lack of that consent and the City should simply grant the permit. (If on the other hand CB&G does not get the relief requested, our position is that the City Council still has the power to grant the appeal based on their own independent conclusions of law as the quasi-judicial agency not bound by the advice of staff or counsel.)

Because this ruling, either way, is critical to the hearing, we respectfully request a continuance of the City Council hearing until the Ruling has been made and the City Council's agenda allows.

Counsel, I am available to discuss at any time at my direct line 510-207-6243.

Yours very truly,

James Anthony



James Anthony

PRINCIPAL

(510) 842-3553 *office*

(510) 207-6243 *cell*

james@anthonylaw.group

----- Forwarded message -----

From: **Geraldine Yulo** <GYulo@jamsadr.com>

Date: Mon, Apr 10, 2023 at 3:55 PM

Subject: Strong, Michelle, et al. vs. La Serena Properties LLC - JAMS Ref No. 5130000363

To: drew.sanchez@anthonylaw.group <drew.sanchez@anthonylaw.group>, james@anthonylaw.group <james@anthonylaw.group>, Steve@jrgattorneys.com <Steve@jrgattorneys.com>

Cc: jamila@anthonylaw.group <jamila@anthonylaw.group>, hannah@anthonylaw.group <hannah@anthonylaw.group>

Dear Counsel:

Judge Sanders wanted to let the parties know that she will have the Ruling next week.

Best,

Geri



Geraldine “Geri” Yulo
Arbitration Practice Consultant

Direct: 213-253-9711

Email: GYulo@jamsadr.com

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3 **ANTHONY LAW GROUP, PC**
4 600 Grand Avenue, Unit 204
Oakland, CA 94610
5 Phone: 510-842-3553
6 Fax: 510-283-0186

7 Attorneys for Claimants, MICHELLE STRONG and LASALLE STRONG

8 **JAMS ARBITRATION**

9 MICHELLE STRONG, an individual; and)
10 LASALLE STRONG, an individual,)
11)
12 Claimants,)
13 vs.)
14 LA SERENA PROPERTIES LLC, a California)
15 limited liability company)
16)
17 Respondent.)

Ref. No. 5130000363
NOTICE OF REQUEST FOR
EMERGENCY ARBITRATOR AND
EMERGENCY INJUNCTIVE RELIEF
[JAMS Rule 2(c)]

18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19 **PLEASE TAKE NOTICE** that as soon as possible under the circumstances, in accordance
20 with the Arbitration provision applicable to this matter, Claimants Michelle Strong and Lasalle Strong
21 (“Claimants”) hereby seek emergency relief under Rule 2(c) under comprehensive rules and procedures.

22 Rule 2(c) states in pertinent part:

23
24 A Party in need of emergency relief prior to the appointment of an Arbitrator
25 may notify JAMS and all other Parties in writing of the relief sought and the basis
26 for an Award of such relief. This Notice shall include an explanation of why such
27 relief is needed on an expedited basis. Such Notice shall be given by email or
28 personal delivery. The Notice must include a statement certifying that all other
Parties have been notified. If all other Parties have not been notified, the Notice
shall include an explanation of the efforts made to notify such Parties.

(JAMS Comprehensive Arbitration Rules & Procedures Rule 2(c)(i).)

Please take notice that Claimants hereby seek an emergency order under the above rule restoring the *status quo ante* between the parties as was in place prior to Respondent's breach of contract. Claimants will seek all available remedies under law and equity including an order that: (1) The *status quo ante* be restored and landlord approval for the entertainment permit be deemed to be in place, (2) Respondent and its agents be prohibited from taking any action to frustrate or impair the live entertainment permit of Claimants, (3) Respondent and Claimants alike will perform their duties and obligations under the Lease Agreement and Respondent shall take all routine and reasonable action required by Claimants to lawfully operate their restaurant business pursuant to the Lease Agreement and Sublease and Assignment Agreement, and (4) all other remedies as may be appropriate after the full briefing of the issues by the parties and any hearing that may be called by the emergency arbitrator.

A grant of emergency injunctive relief generally requires a showing of the following: (1) an inadequate remedy at law often interpreted to mean monetary relief is inadequate, (2) a serious risk of irreparable harm absent injunctive relief, (3) a likelihood that the plaintiff will prevail on the merits of the underlying controversy, and (4) a comparison of the harm to defendant in issuing an injunction versus the harm to plaintiff in withholding it, which on balance favors the plaintiff.

No adequate remedy at law is available to the Claimants because Claimants face extensive damage to their business' brand, reputation, market penetration, and business good will everyday that they have to operate without live music. The extent of this damage is unknown and unknowable and cannot be made whole with monetary damages alone. This irreparable harm will continue unabated absent injunctive relief, and even with the swift timeline of JAMS arbitration, any remedy on normal timelines would still take months. Claimants will suffer irreparable harm.

Claimants are likely to prevail on the merits of the underlying controversy because the operative Lease Agreement is ambiguous as to whether live music is prohibited or permitted by the Lease


1 Agreement, the contemporaneous written communications of the parties reveal unambiguous intent that
2 live music was to be a part of the Agreement, and Claimants actually operated their restaurant with live
3 music for approximately 18 months. Respondent's anticipated claims of nuisance in violation of the
4 Lease Agreement are unsubstantiated and without merit. Claimants were in compliance with the Lease
5 Agreement at all times relevant herein.
6

7 Respondent is a landlord of the commercial building and will suffer no direct harm if the
8 requested relief is granted by arbitrator award. Claimants lawful operation of their restaurant business in
9 compliance with local and state law is not a violation of the Lease Agreement even if it personally
10 bothers landlords' manager Steven Yates. Landlord, as a limited liability company holding real property,
11 cannot reasonably be argued to suffer any harm by Claimants lawful operation of their business under
12 local and state law.
13

14 This notice is non exhaustive and Claimants reserve the right to adduce more factual information
15 and assert different or more complete legal theories in their brief filed in support of this request.
16

17 Dated: March 15, 2023

ANTHONY LAW GROUP, PC



Drew Sanchez

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PROOF OF SERVICE

I, Jamila Colbert, declare: I am over the age of 18 years, and am not a party to this action. On March 15, 2023, I served the following documents:

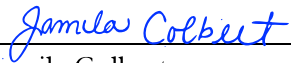
NOTICE OF REQUEST FOR EMERGENCY ARBITRATOR AND EMERGENCY INJUNCTIVE RELIEF

VIA ELECTRONIC MAIL The documents were transmitted in PDF format to each of the email addresses as indicated on the service list.

JRG Attorneys at Law,
C/O Stephan Barber
318 Cayuga St, Ste 101,
Salinas, CA 93901-2668
(e): steve@jrgattorneys.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 15, 2023, at Oakland, California.



Jamila Colbert