

Reply to the Attention of Mary Flynn-Guglietti
Direct Line 416.865.7256
Email Address mary.flynn@mcmillan.ca
Our File No. 223956
Date June 28, 2016

Delivered by e-mail to exc@toronto.ca

City of Toronto
100 Queen Street West
Toronto, ON
M5G 1P5

Attention: Chair Mayor John Tory

Dear Chair Mayor Tory and Members of the Executive Committee:

Re: Executive Committee Agenda of Tuesday, June 28, 2016
Item No. EX16.43
Muzik Club Lease Terms and Conditions (Ward 14, 19)

We are the solicitors acting on behalf of Cerise Fine Catering (“**Cerise**”), the exclusive caterer to the Allstream Centre in Exhibition Place by virtue of a lease executed by Cerise and the Board of Governors of Exhibition Place (the “**Board**”) on June 1, 2009. We have had an opportunity to review the report prepared by the Chief Executive Officer of Exhibition Place, Ms. Dianne Young dated June 14, 2016 (the “**Report**”), recommending amendments to the “Use” provisions in the Hypnotic Clubs Inc.’s lease (successor to Muzik Clubs Inc.) and wish to inform members of the Executive Committee of our client’s strenuous objections.

The recommendations contained in the Report would amend section 5.1 and 5.2 of the Muzik Clubs’ lease to permit it to host banquets provided that if the Muzik Clubs, in any one year, contracts to hold more than thirty (30) banquets it will provide notice to the Liberty Grand Entertainment Group (“**Liberty**”) and Liberty will have the first right of refusal to cater such banquets and further recommends that it will confirm in writing to Muzik Clubs, in respect of trade and consumer shows, although the prohibition against holding trade and consumer shows in the Muzik Clubs lease will remain, that the Muzik Clubs can host occasional trade and consumer shows with the prior written consent of the Landlord.

We respectfully submit that adoption of said recommendations to the Muzik Clubs lease would materially undermine Cerise’s agreement with the Board and would negatively erode Cerise’s revenue at the Allstream Centre. Further we submit that said amendment to the Muzik Clubs lease cannot be undertaken without a proper RFP which is necessary to ensure an open and transparent bidding process for the award of such a contract. Further it is apparent that in order to achieve said amendments to the Muzik Clubs lease, that Liberty may in turn benefit in holding a right of first refusal to host any banquets above the newly allocated 30 banquets to the exclusion of others.

As discussed at length in the June 14th Report every lease at Exhibition Place contains clauses which limit the rights of the tenants to carry on certain businesses. One key protected use is the “trade and consumer show activities” which is the core business of Exhibition Place. As well each lease contains limitations based on factors such as limitations stipulated in the original offer to the public (RFP), uses proposed by the successful respondent to a particular request for proposal and any exclusive use clauses of other tenants such that rents paid by all tenants are negotiated and tied to the limitations. A public request for proposals was issued and Muzik Clubs responded to the RFP with a proposal for a year-round entertainment venue for concert performance and a nightclub. The RFP rent bid accepted by the Board for the Muzik Clubs lease was based on its primary business of nightclub type events and also on the prohibition not to hold banquets or trade and consumer show activities. To now permit the Muzik Clubs to hold up to 30 banquets and an unspecified number of trade and consumer show activities with the permission of the Board fundamentally changes the nature of the business that was contracted through a public RFP.

With respect to the lease agreement between Cerise and the Board the agreement was specifically negotiated to anticipate for, and protect Cerise against competition and hence the negotiated large minimum annual payment paid by Cerise. It is our understanding, at the time of negotiating the Cerise lease, that Muzik had already entered into its agreement with the Board, at a fraction of the guaranteed financial requirements of Cerise as Muzik was only permitted to host Canadian music shows. Cerise relied on this limitation in agreeing to the large minimum financial payment it makes to the Board. Cerise at all times has relied upon the prohibitions against Muzik’s expansion of events.

We therefore respectfully request the Executive Committee to reject the recommendations contained in the June 14, 2016 Report for the reasons stated above. I will be in attendance at the June 28th Executive Committee as a deputation but will not be able to attend until 11:00 am due to a prior commitment and trust that the Committee will hold the item until that time.

Yours truly,

per: 
Mary Flynn-GugNetti

/jl

Cc: Alexander F. Powell, Vice President and Associate General Counsel Centerplate
Barbara A. Cappell, Solicitor, City of Toronto Legal Services Division