

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

G & G Closed Circuit Events, LLC v. Baaset

G & G Closed Circuit Events · No. 24-cv-00089-EMC · Decided September 5, 2025

OPINION

G & G Closed Circuit Events, LLC v. Baaset

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 G & G CLOSED CIRCUIT EVENTS, LLC, Case No. 24-cv-00089-EMC 8 Plaintiff,

ORDER GRANTING IN PART AND

9 v. DENYING IN PART PLAINTIFF'S

MOTION TO STRIKE

10 BUKHARI NAJEEULLAH BAASET, et

al., 11 Docket No. 73 Defendants. 12 13 14 Plaintiff G&G Closed Circuit Events, LLC has filed
suit against Defendants Najeeullah 15 Baaset (individually and d/b/a BNB Wings N' Things) and
BNB Wings N' Things LLC ("BNB 16 LLC"). According to G&G, Defendants run a commercial
establishment and, on April 22, 2023, 17 unlawfully intercepted and broadcast a program for
which G&G had the exclusive nationwide 18 commercial distribution rights. Now pending before
the Court is G&G's motion to strike 19 affirmative defenses raised in Defendants' second
amended answer. Having considered the 20 parties' briefs as well as the oral argument of counsel,
the Court hereby GRANTS in part and 21 DENIES in part the motion to strike. 22 The affirmative
defenses at issue are: (1) failure to mitigate damages and (2) unclean 23 hands. For the first
affirmative defense (failure to mitigate), Defendants allege that G&G had to 24 have known
Defendants were going to broadcast the program because it hired a private 25 investigator who
went to the establishment in the first place (i.e., the investigator going to the 26 establishment and
seeing the broadcast of the program was no accident). See Affirm. Def. ¶¶ 1-2. 27 That G&G
and/or its investigator knew about the program beforehand is also supported by the 1 the program.
See Compl. ¶ 16. Defendants allege that, because G&G knew about the upcoming 2 broadcast at
the establishment, it could have taken action before the broadcast to stop it from 3 happening. See
Affirm. Def. ¶ 3. According to G&G, the very least, G&G's investigator – while 4 actually visiting
the establishment – could have stopped the broadcast, either when it was about to 5 happen or in
the middle of the broadcast. See Affirm. Def. ¶ 4. 6 For the second affirmative defense (unclean
hands), Defendants make the same basic 7 allegations and also add the following allegations: (1)

Defendants purchased the right to show the 8 program from their Showtime app; (2) G&G allowed the broadcast to take place in the 9 establishment – even though it could have stopped it – “to create unnecessary litigation”; and (3) 10 G&G has a pattern and practice of conducting itself this way, having filed “over 350 nationwide 11 cases.” Affirm. Def. ¶¶ 12-13. 12 The Court agrees with G&G that the unclean hands affirmative defense should be stricken. 13 Defendants have not made a showing that G&G engaged in such inequitable conduct that it should 14 be barred from asserting a claim altogether. This is not a situation where, e.g., G&G “induce[d] 15 [D]efendants into broadcasting the program illegally.” *J&J Sports Prods. v. Bouton*, No. 12-cv- 16 05762-RS, 2015 U.S. Dist. LEXIS 194069, at *6 (N.D. Cal. May 13, 2015). Nothing akin to 17 entrapment or similarly egregious conduct is alleged. 18 As for the affirmative defense of failure to mitigate, the Court strikes it in part. To the 19 extent Defendants argue that G&G could have prevented its injury from happening in the first 20 place, that cannot be the basis of a failure-to-mitigate defense. “The duty to mitigate arises after 21 an injury occurs, not before. . . . [M]itigation is a method of apportioning damages where the 22 party, ‘subsequent to infliction of the harm,’ fails to reasonably avoid loss. Other circuits agree 23 that the ‘duty’ arises only after injury.” *Energy Intelligence Grp., Inc. v. Kayne Anderson Capital 24 Advisors, L.P.*, 948 F.3d 261, 274 (5th Cir. 2020); see also *id.* at 274 n.12 (noting that the 25 Restatement (Second) of Torts characterizes mitigation as the doctrine of avoidable consequences, 26 and, under that doctrine, “‘one injured by the tort of another is not entitled to recover damages for 27 any harm that he could have avoided by the use of reasonable effort or expenditure after the 1 That being said, it is not clear whether G&G could have reduced its losses once 2 Defendants began to show the program at the establishment but before the broadcast was 3 complete. For example, G&G has asserted a claim for conversion and seeks as part of its damages 4 the “commercial license fee to which [it] was rightfully entitled to receive.” Compl. ¶ 38. The 5 license fee, however, could have turned on the number of patrons at the establishment and, if 6 G&G had its private investigator “intervene[] to shut off the Program at any point after his arrival, 7 some of [the] patrons conceivably might have returned to their homes to purchase and view the 8 Program privately [which] could have reduced the losses [G&G] incurred from defendants’ failure 9 to purchase a license.” *Bouton*, 2015 U.S. Dist. LEXIS 194069, at *7-8 (stating that “there exists 10 a plausible theory by which plaintiff could have mitigated its damages after defendants began 11 illegally intercepting” and thus allowing the mitigation defense to advance). As another example, 12 G&G has asserted a claim for violation of California Business & Professions Code § 17200 and 13 seeks as part of its restitution disgorgement of ill-gotten gains. Ill-gotten gains could include 14 profits made on food and drink, which – as above – could turn on the number of patrons at the 15 establishment.¹ To be sure, as a factual matter, G&G may be able to demonstrate it was neither 16 practical nor reasonable for the investigator to intervene. For instance, it may not have been 17 possible to verify whether G&G had purchased the license at the last minute. Or the risk of 18 confrontation with patrons could have provided good reason not to intervene in the broadcast. 19 /// 20 /// 21 /

// 22 1 The number of customers could also affect statutory damages which Plaintiffs seek for violation 23 of the Communications Act of 1934 (47 U.S.C. § 605) and the Cable & Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 553) – though admittedly, this would not fall 24 under the rubric of failure to mitigate. See, e.g., Kingvision Pay-Per-View, Ltd. v. Zalazar, 653 F. Supp. 2d 335, 340 (S.D.N.Y. 2009) (noting that, “[w]hen determining statutory damages under 25 section 605, courts generally choose between two methods of calculation – a per-customer damage calculation or a flat-sum award”; “[t]he per-customer approach employs a formula that multiplies 26 a dollar amount per customer by the number of patrons present during the unauthorized exhibition” while the flat-sum approach involves consideration of factors such as “the financial 27 loss to the plaintiff, the costs that the defendant avoided, the profits realized by the defendant as a 1 And depending upon the nature of the relief sought, intervention once the program started may not 2 || have averted any of the damages sought. The Court, nonetheless at this juncture, does not strike 3 the affirmative defense of failure to mitigate in its entirety as this is simply the pleading stage. 4 This order disposes of Docket No. 73. 5 6 IT IS SO ORDERED. 7 8 Dated: September 5, 2025 9 10

EDWA CHEN

United States District Judge 12 15 16 17 Z 18 19 20 21 22 23 24 25 26 27 28