

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **HERMAN CAHN**

PART 49

Index Number : 602499/2006

WALKER, GREG

vs
KNOWLES, BEYONCE

Sequence Number : 001

DISMISS ACTION

C

INDEX NO. _____
MOTION DATE 12/11/06
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION IN MOTION SEQUENCE**

FILED
MAR 23 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/16/07 *Her Cahn* J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

-----X

GREG WALKER,

Plaintiff,

-against-

Index No. 602499/2006

BEYONCE KNOWLES and WEAR ME APPAREL CORP.
d/b/a KIDS HEADQUARTERS,

Defendants.

-----X

HERMAN CAHN, J.:

In this breach of contract action, defendants Beyonce Knowles (“Knowles”), a well-known performer, and Wear Me Apparel Corp. d/b/a/ Kids Headquarters (“WMA”), a clothing manufacturer, move to dismiss the complaint, CPLR 3211(a) (1), (5) and (7).

BACKGROUND

Plaintiff Greg Walker (“Walker”) brings this action for payment for services he allegedly rendered in arranging a licensing agreement between Knowles and WMA. The complaint alleges that in 2003, Tina Knowles, Knowles’ mother and authorized agent, engaged him to assist Knowles “in obtaining a licensing and business opportunity similar to that of Sean Combs” (Wagner Aff. Ex. A, ¶ 11) and that, in exchange, Knowles agreed to compensate Walker for the reasonable value of his services (Wagner Aff., Ex. A, ¶ 12). Walker states that his duties included obtaining licensing and business proposals from third parties, presenting the proposals to Knowles and then facilitating communications between the third-party and Knowles. (Wagner Aff., Ex. A, ¶ 14).

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According to the complaint, on November 23, 2003, Walker entered into an agreement with WMA whereby Walker agreed to assist WMA in obtaining a licensing agreement with Knowles. Pursuant to the agreement, WMA agreed to pay him a commission equaling 0.5% of the net sales of products licensed under the agreement. Walker alleges that both Knowles and WMA were aware that he would receive compensation from both of them for arranging the licensing agreement. (Wagner Aff., Ex. A, ¶¶ 17-22).

Walker states that he facilitated numerous meetings between representatives of WMA and Knowles with respect to the licensing agreement. He further alleges, on information and belief, that in the Fall of 2004, WMA and Knowles entered into a licensing agreement and a joint venture known as Beyond Productions, LLC, through which they would sell products covered by the licensing agreement. Beyond Productions, LLC created the "House of Dereon" brand of apparel, accessories and related products. Knowles has collected substantial sums of money on account of the licensing of her name, likeness and image in connection with the "House of Dereon." (Wagner Aff., Ex. A, ¶¶ 31-35).

Walker complains that, despite due demand, he has only been paid \$25,000 from Knowles and \$85,000 from WMA for his efforts in facilitating the licensing agreement.

The complaint contains causes of action for breach of contract and quantum meruit against Knowles and breach of contract against WMA and demands damages for breach of each of the agreements and an accounting.

In support of this pre-answer motion to dismiss, Knowles argues that the breach of contract and quantum meruit claims against her are barred by the Statute of Frauds, GOL 5-701(a)(10), as a contract for negotiating a business opportunity, because there is no signed

writing evidencing the contract. Alternatively, she argues that the breach of contract claim must be dismissed because it fails to state the material terms of the alleged agreement. WMA contends that the breach of contract claim against it also violates the Statute of Frauds, GOL 5-701(a)(10), as it never signed or otherwise executed the alleged November 23, 2003 agreement.

In opposition, Walker claims that evidence of defendants' payments to him and the partially executed contract with WMA constitute indicia of partial performance sufficient to overcome the Statute of Frauds. Moreover, he argues that discovery is necessary as documents that will prove the existence of the contracts reside with the defendants. Plaintiff also seeks to amend his complaint to add a quantum meruit cause of action against WMA.

DISCUSSION

The motion to dismiss is granted.

The Statute of Frauds, GOL 5-701(a)(10), provides that an agreement is void unless it is in writing and subscribed by the party to be charged therewith if it:

Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange, renting or leasing . . . , or of a *business opportunity*, business,

(Emphasis added). "Negotiating" includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction. GOL 5-701(a)(10). The statute further provides that it "shall apply to a contract implied in fact or in law to pay reasonable compensation" *Id.* Walker's purported agreements with Knowles and WMA to negotiate a business opportunity fall within this provision of the Statute of Frauds and, therefore, to be enforceable, there must be a writing evidencing each of the contracts signed by each of the

defendants. (*See Davis & Mamber, Ltd. v. Adrienne Vittadini, Inc.*, 212 A.D.2d 424, 424 [1st Dept. 1995]; *Stephen Pevner, Inc. v. Ensler*, 309 A.D.2d 722, 722 [1st Dept. 2003]).

In *Sporn v. Suffolk Mktg., Inc.*, 56 N.Y.2d 864 (1982), the Court of Appeals affirmed the dismissal of a complaint seeking enforcement of an oral agreement to procure a licensing agreement between a recording artist and a record company. The court held that the licensing agreement constituted a business opportunity within the meaning of the Statute of Frauds and that, accordingly, the claim was barred by the Statute of Frauds. (*See also Meyer v. Shearson Lehman Brothers, Inc.*, 211 A.D.2d 541 [1st Dept. 1995] [affirming the dismissal of a breach of contract claim for a finder's fee on Statute of Frauds grounds where there was no writing memorializing the agreement]).

Here, the complaint and other submissions of the parties establish that there is no fully executed writing evidencing either of the contracts.

Regarding the claimed contract with Knowles, Walker has not produced any writing whatsoever that refers to the contract and/or includes the terms of the contract that has been subscribed by Knowles or her authorized agent. Indeed, Tina Knowles states, in an October 23, 2006 affidavit, that neither she nor Knowles "ever signed or otherwise executed, or even had such an agreement with Walker."

As to the purported WMA agreement, Walker's submission of a copy of the draft contract that only he signed, fails to satisfy the Statute of Frauds, which requires a writing, subscribed to by the party to be charged. WMA's fax legend at the top of the document is insufficient to fulfill the subscription requirement because, as the court explained in *Parma Tile Mosaic & Marble Co., Inc., v. Estate of Short*, 87 N.Y.2d 524, 527 (1996), "subscribe" has a "special meaning

under the Statute of Frauds.” The party to be charged must have “affixed its ‘signature’ to the document” in a manner “sufficient to fulfill the subscription requirement.” *Id.* In that case, the court held that the fact that the agreement bore defendant’s name on a fax legend at the top of the document was not of consequence.

Moreover, the Statute of Frauds bars enforcement when the defendant sends the contract to plaintiff for plaintiff’s signature, but defendant has not signed the contract in its own right. In *Allison Place Ltd. v. Contowers Assocs. Ltd. P’ship.*, 261 A.D.2d 169, 169 (1st Dept. 1999), the court affirmed the dismissal of a complaint based on an agreement drafted, but not signed, by the defendant holding that “[t]he lease extension agreement drafted by defendant that plaintiff seeks to enforce is void under the Statute of Frauds because it was never signed by the defendant.” (See also *Scheck v. Francis*, 33 A.D.2d 91, 95 [1st Dept. 1969], *aff’d* 26 N.Y.2d 466 [1970]; *Sheehy v. Clifford Chance Rogers & Wells*, 3 N.Y.3d 554, 556 n. 2 [2004] [plaintiff could not enforce an agreement allegedly reflected in a memorandum because the memorandum was not signed by anyone with authority to do so on behalf of the defendant]; *Steinbuch v. Kapell*, 5 A.D. 3d 374, 375 [2nd Dept. 2004] [“While the ‘Memorandum of Agreement’ drafted by the defendants and signed by the plaintiff set forth the essential terms of the proposed contract . . . there could be no enforceable contract under the Statute of Frauds unless the document was subscribed by the defendants.”]). In an October 24, 2006 affidavit, Corey Silverstein, executive Vice President of WMA avers that “WMA never signed or otherwise executed the draft contract attached . . . to Walker’s affidavit.”

The checks and check stubs that Walker relies on as evidence of the contracts do not fulfill the Statute of Frauds writing requirement because, although they are signed by the parties

to be charged, they do not indicate the duration of the contract, the rate of compensation or the services to be exchanged for payment. (*See Signature Brokerage Inc. v. Group Health Incorporated*, 5 A.D.3d 196, 197 [1st Dept. 2004]).

Moreover, Walker's argument that the payments from Knowles and WMA, as evidenced by the checks and check stubs, demonstrate partial performance and that this partial agreement takes the contracts out of the Statute of Frauds, is unavailing. The Court of Appeals in *Messner Vetere Berger McNamee Schmetterer Euro RSCG Inc. v. Aegis Group PLC*, 93 N.Y.2d 229, 234 n.1 (1999), stated that it "[has] not in fact adopted" a judicially created part performance exception to GOL 5-701, parallel to the one adopted with regard to GOL 5-703. (*See also Stephen Pevner, Inc. v. Ensler*, 309 A.D.2d at 722 ["[t]he exception to the statute of frauds for part performance . . . has not been extended to GOL 5-701"]). The court notes that even if the doctrine of part performance applied, the checks and check stubs that Walker relies upon are not unequivocally referable to the claimed oral contracts. They do not refer to the alleged licensing agreements and might be explained as payments for any number of goods or services that Walker might have provided for the defendants.

Walker's request for discovery is rejected as he has failed to demonstrate that facts essential to justify opposition to the motion may exist but could not be stated. CPLR 3211(d). Given the unequivocal affidavits from the defendants that they never signed or otherwise executed the alleged contracts in this matter, it appears that plaintiff's argument concerning the existence of additional evidence establishing the agreements is merely speculative. (*Fitz-Gerald v. Donaldson, Lufkin & Jenrette, Inc.*, 294 A.D.2d 176 [1st Dept. 2002]; *Campbell v. City of New*

York, 220 A.D.2d 476, 477 [2nd Dept. 1995]; *Klein v. Jamor Purveyors, Inc.*, 108 A.D.2d 344, 350 (2nd Dept. 1985).

Accordingly, the first and third causes of action for breach of contract against WMA and Knowles are dismissed.

Walker's claim against Knowles for quantum meruit is also dismissed on Statute of Frauds grounds. In *Minchiello v. Royal Bus. Funds Corp.*, 18 N.Y.2d 521 (1966), the Court of Appeals reversed the denial of a motion to dismiss a complaint seeking both contract damages and quantum meruit recovery based on the Statute of Frauds stating that a writing was required to support a quantum meruit claim by a contract finder. In *Newman v. Crazy Eddie*, 119 A.D.2d 738 (2nd Dept. 1986), the court dismissed a quantum meruit claim based on an alleged oral contract that required plaintiff to use his 'know how' and 'know who' to negotiate with an underwriter concerning a proposed public offering of defendant's stock. The court stated that "[g]iven the absence of a sufficient written memorandum of the alleged oral agreement, the plaintiff's cause of action sounding in quantum meruit is also barred by General Obligations Law 5-701(a)(10)." Based on the above, Walker's informal request to amend the complaint to add a quantum meruit cause of action against WMA would be futile. (*Id.* at 738).

Accordingly, the second cause of action seeking quantum meruit recovery against Knowles is dismissed.

The complaint is dismissed based on the Statute of Frauds and, as such, defendants' alternative arguments are not addressed.

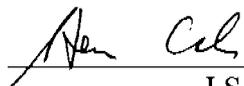
Accordingly, it is

ORDERED that defendants' motion to dismiss the complaint is granted in its entirety,
and it is further

ORDERED that the clerk is directed to enter judgment accordingly.

DATE: March 16, 2007

ENTER:



J.S.C.

FILED
MAR 23 2007
NEW YORK
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