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

PRESENT: Freedman Justice

PART 39m

Milan Mosoc, Inc

- v -

Emmel Communications

INDEX NO. 601306/03

MOTION DATE

MOTION SEQ. NO. 002

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the within accompanying memorandum decision.

FILED
FEB 22 2006
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 2/20/06

Helen E. Freedman
J.S.C.

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

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

----------X

MILAN MUSIC, INC., SOLOMON HATCHER, and DANIEL ST. PRIX,

Plaintiffs,

-against- Index No.

EMMEL COMMUNICATIONS BOOKINGS, INC., VIOLATOR MANAGEMENT, INC., MICHAEL LIGHTY, CHRIS LIGHTY, DAVE LIGHTY, and CURTIS JACKSON p/k/a "50 CENT",

Defendants.

----------X

HELEN E. FREEDMAN, J:

In this action, plaintiffs, Solomon Hatcher and Daniel St. Prix as the sole owners of Milan Music, Inc. ("Milan"), a small recording company and corporation engaged in the business of promoting music concerts featuring various music recording artists, sue various defendants alleging that they breached several contracts. The defendants are Emmel Communications Bookings, Inc.("Emmel"), a concert booking agency, Violator Management Inc. ("Violator") a music management company that engages in the career management of entertainment artists, Michael Lighty, an officer of Emmel, Chris Lighty, an officer of Violator, Curtis Jackson or "50 Cent," a concert artist and Emmel's client, and Dave Lighty.

Plaintiffs allege that defendants breached and caused 50 Cent to breach various contracts. Initially plaintiffs claimed defendants breached a written contract between Emmel and 50 Cent on the one hand, and Solomon Hatcher and Milan Music on the other, for a concert to be performed by 50 Cent at the Idaho Center Arena in Nampa, Idaho on Mauy 11th, 2003. With the

court's permission, plaintiffs amended their complaint to add breaches of various other alleged oral contracts for concerts to be performed in February of 2003 and April of 2003.

After deposing numerous parties including 50 Cent, representatives of William Morris Agency, another of 50 Cent's booking agencies, and the various parties, on the eve of trial, defendants move for summary judgment dismissing all of plaintiffs' claims. Although much energy has been devoted to preparation of this case, for the foregoing reasons, the court is constrained to grant the motion for summary judgment dismissing the entire complaint.

The undisputed facts are that Milan and one Mark Reeder working together with Michael Lighty began negotiations for Milan to promote 50 Cent concerts in the beginning of 2003, the first one to take place at the Baltimore Arena. Jackson and Milan or Hatcher and St. Prix signed a written agreement on February 8, 2003 executed by Michael Lighty on 50 Cent's behalf that provided for Jackson to appear at a concert at the Baltimore Arena on February 26th 2003 for $40,000 plus various costs and amenities. Plaintiffs are now claiming that Jackson was supposed to appear on February 16th in exchange for $25,000, but because defendants would not sign a contract to that effect, the venue postponed the concert for ten days, which caused them to lose money. However, when asked during his deposition Mr. St. Prix was unable to identify any losses resulting from the ten day difference. Defendants dispute that there was any oral agreement to appear earlier asserting that every one of Jackson's 500 concert appearances during the past few years were made pursuant to a written contract because no concert venue would schedule a concert without a signed agreement from the artist or his agent. Additionally, there were a number of other artists who appeared at the February 26th concert, and no concert was scheduled for February 16th. Finally, the agreement with the Baltimore Arena was for February

26th not 16th. Hatcher, at his deposition acknowledged that it was important for agents and artists to have written contracts. Plaintiffs also contend that they were only supposed to pay $25,000 but were pressured by Jackson to pay an additional $15,000 or $ 20,000 at the last minute, but the contract provides for a $40,000 payment.

Next, plaintiffs claim that defendants agreed to 50 Cents' appearing at three performances to take place n the Northeast on consecutive nights in late April one in Albany, one in Worcester and one in Pittsburgh for $40,000 per show. Defendants acknowledge some discussion about these three concerts but deny that any agreements were reached. Plaintiffs can point to no specific actions taken to implement such (oral) contracts nor any of the specific terms that would necessarily have been agreed upon for an oral contract to be enforceable. Plaintiffs never secured contracts with the arenas in any of those cities for these concerts nor are they able to furnish evidence of any payments to the arenas, although they do have unsigned copies of contracts for two of them. Plaintiffs now contend that they forwarded $50,000 to Emmel for these concerts rather than for the May 11th concert, but that contention is belied by the record and subsequent events.

About March 18, 2003, plaintiffs and defendants did enter into a written agreement, which both parties acknowledged at oral argument was a "novation" for the three Northeastern concerts that were never actually scheduled, for 50 Cent to appear at the Nampa Idaho Center Arena on May 11, 2003. The cost to plaintiffs was to be $100,000, with $50,000 due immediately and the remainder to be paid by May 4, 2003 by wire or cashier's check. The contract provided that failure to pay meant the engagement would be canceled. Emmel avers that it received the first (and only) $50, 000 check on March 19, 2003.

On April 9, 2003, Michael Lighty testified that Mr. Hatcher contacted him to discuss cancellation of the Idaho Concert and Agreement because he did not think he could make a sufficient profit. Lighty also says that he and Chris Lighty were aware that Milan had been unable to obtain a necessary insurance policy for the concert. Michael Lighty says that he agreed to the cancellation and to return the $50,000 deposit to Milan.

After the oral agreement to cancel the Idaho contract, plaintiffs' attorney, Wallace Collins of Sherling, Rooks & Ferrara LLP faxed a letter to Emmel stating:

> "This letter will confirm that earlier today it was agreed between the parties to the Engagement Agreement that the May 11 concert scheduled for Idaho Center Arena in Nampa, Idaho is be cancelled and my client's $50,000 deposit returned to him.....Accordingly please return the $50,000 deposit to my client a.s.a.p."

On April 15, 2003 Jeremiah Younossi, as authorized representative of Emmel and Chris Lighty of Violator wrote a letter stating:

> "The deposit amount of $50,000 will be refunded on April 15, 2003 as evidence of the cancellation of a concert event featuring the artist 50 CENT. The concert event scheduled for Sunday, May 11, 2003 at the Idaho Arena Sevilla located in Nampa Idaho can no longer be held at this time due to unanticipated circumstances and the personal actions of Solomon Hatcher.
>
> Violator management states that following the release of the deposited amount of $50,000 to Solomon Hatcher, Emmel Communications, Inc. Will terminated any and all previous contracts and agreements for the above referenced concert date. Upon receipt of this letter, you agree that in no way shall our company be held liable for the actions leading to this termination.

On April 16th 2003, Wallace Collins sent another letter stating the following:

> In accordance with the discussions and correspondence between my client and you and other representatives of "50 Cent", and since the deposit was not refunded and, in detrimental reliance upon the contract and the promise to perform my client has commenced sale of tickets for the subject venue, the offer

in our letter of April 2003, is hereby withdrawn.

On April 17th the $50,000 refund was wired to Milan and accepted. No further efforts to enforce the original contract such as return of the $50,000 refund or payment of the additional $50,000 on May 4th were made.

On April 15, 2003, five days after plaintiffs' attorney sent his cancellation letter, plaintiff Solomon Hatcher received a letter from one Ruth Estrada of the William Morris Agency, Inc. stating as follows:

> Please be advised that we are the sole and exclusive agent for 59 Cent and it is our understanding that you have been wrongfully promoting and selling tickets for the above referenced engagement. [PAVILION AT BOISE STATE UNIVERSITY, BOISE IDAHO]
>
> Be further advised that our client never agreed to perform at this engagement.....Therefore, any use of 50 Cent's name.....is completely without our client's consent and...constitutes a violation of our rights
>
> Demand is hereby made that you (i)immediately cease and disist from any further activity in which in any way infringes or violates our client's rights and (ii) notify us ...of any other persons with whom you have been acting in concert.....

Based on the foregoing recitation, defendants are entitled to summary judgment dismissing the claims against them.

Plaintiffs make much of the letter sent by Ruth Estrada. However, at her deposition, Ms. Estrada admits that if she had seen the contract between Emmel and Milan, she would not have written the letter. For some reason, plaintiffs believe that Estrada's assertion that William Morris was the only authorized agent, affected or related to the termination of the Nampa concert in this case. Plaintiffs claim that it is Chris Lighty who lied at his deposition about whether he knew about or influenced Ms. Estrada's letter even though he denied knowing about it or

remembering it. For several reasons, the Estrada letter is of little consequence. First Jackson (50 CENT) has testified that Mike Lighty (Emmel) was authorized as his booking agent, that Chris Lighty had the authority to sign his name to a contract in early 2003, and plaintiffs had already dealt with Emmel in the booking of the Baltimore concert. In fact, Emmel has represented Jackson as agent on numerous occasions. Second, the letter from Estrada came after and **not** before plaintiffs' attorney memorialized the cancellation agreement in his April 9th letter. Thus, the Ruth Estrada letter, while unfortunate, appears to be the proverbial "red herring" vis a vis the issues in this case.

With respect to the claims for breach of and alleged oral agreement for an appearance by 50 Cent on February 16, 2003, as opposed to February 26th, 2003 when the Hip Hop star did appear, and for breach of the alleged oral agreements relating to the April 28, 29th and 30th appearances in Albany, Worcester and Pittsburgh, the evidence furnished by plaintiffs is insufficient to demonstrate that there were actual agreements. In order to establish the existence of an oral agreement, there must be clear evidence of mutual assent–the agreement must be sufficiently certain and definite so that the parties' intentions are ascertainable and material terms must have been agreed upon. *Martin Delicatessen, Inv. V. Schumacher,* 52 N.Y.2d 105 (1981); *Maffea v. Ippolito.* 247 A.D.2d 366, 668 N.Y.S.2d 653 (2d Dept. 1998). The deposition testimony and actions of the parties indicates that in none of these instances was that the case. At most, there is evidence that the parties were exploring possible contracts for appearances on those dates. Plaintiffs have only unsigned contracts with the relevant venues for the late April performances. They have no concrete evidence that anything more than discussions about such performances occurred. Similarly, while there may have been some discussion of a

concert on February 16th, the written contract states February 26th. In both instances, the existence of subsequent written contracts indicates that the parties intended to perform pursuant to written contracts, not oral ones. Finally, it is not believable that venues would enter into performance contracts with promoters without having written contracts signed by artists or their agents.

There was unquestionably a written contract binding both Emmel and 50 Cent as well as Milan for a May 11th concert performance in Nampa Idaho. However, the April 9th letter from plaintiffs' lawyer unequivocally memorialized a subsequent agreement by the parties to cancel that contract. The letter canceling the contract was written by plaintiffs' attorney before any communications from the William Morris Agency arrived. There is no evidence that the Estrada letter was either procured by any defendant or that it had any role in the prior rescission by plaintiffs. Plaintiffs aver that the April 16th letter rescinding the rescission or cancellation of the agreement voids the cancellation and gives them rights to sue for breach of the underlying contract. However, in order to cancel a rescission, there must be a reservation of rights to do so. *Can-Am Organic Foods, Lt. v. Philips Business Systems et al.*, 83 A.D.2d 528 (1st Dept. 1981).; see also *Mallad Construction Corp. v. County Federal Savings and Loan Association,* 32 N.Y.2d 285 (1973); *M.J. Posner Constr. Co., Inc. V. Valley View Development.* Corp., 118 A.D.2d 1001 (3d Dept. 1986). The only reservation here was that the rescission was conditioned on the refund of the $50,000. The money was wired the very next day. Plaintiffs neither objected upon receipt of the $50,000 or shortly thereafter, nor they proceed in any way to fulfill any of their obligations under the contract.

Defendants seek to distinguish the various parties sued alleging that Chris Lighty signed

the Idaho contract only as an agent for a disclosed principal, 50 CENT, and that none of the other individuals is a principal against whom a claim can be made. In view of the absence of any colorable claim by plaintiffs, that issue need not be addressed. Nor is it necessary to decide whether the individual plaintiffs have standing because they allegedly signed the contracts in their capacity as Milan officers. Finally, although damage claims may well be at best speculative, the issue of the validity of those claims also need not be addressed at this time.

Accordingly, it is hereby

ORDERED that the claims against all of the named defendants are dismissed and it is further,

ORDERED that the Clerk is directed to dismiss the within action.

Dated: February 20, 2006

Enter:

Helen E. Freedman

Helen E. Freedman, J.S.C.