

Eggert v GCD Recording Studios

2009 NY Slip Op 30309(U)

February 10, 2009

Supreme Court, New York County

Docket Number: 115419/07

Judge: Barbara R. Kapnick

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

PRESENT: Hon. **BARBARA R. KAPNICK**

PART 39

Justice

Eggert, PAUL

INDEX NO.

115419/07

MOTION DATE

GCD RECORDING STUDIOS

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

MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION

FILED

FEB 13 2009

COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE _____
DATED: _____ J.S.C.

Dated: 2/10/09



BARBARA R. KAPNICK S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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

-----X
PAUL EGGERT,

Plaintiff,

- against -

GCD RECORDING STUDIOS a/k/a ROC THE MIC,
JUAN PEREZ, SHAWNELLE SCOTT, and
SAMUEL ALBANO,

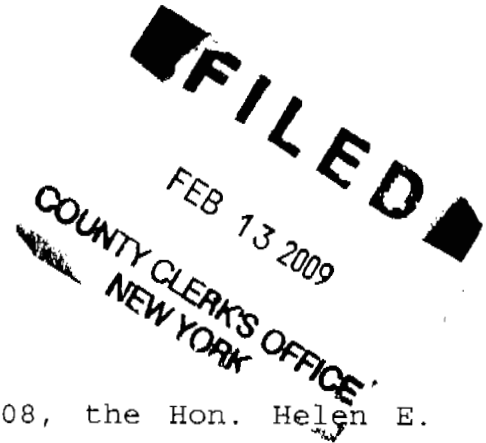
Defendants.
-----X

BARBARA R. KAPNICK, J.:

DECISION/ORDER

Index No. 115419/07

Motion Seq. No. 002



By Decision/Order dated June 26, 2008, the Hon. Helen E. Freedman granted a prior motion by defendant Juan Perez (made under motion sequence number 001) to dismiss the only remaining cause of action against him - i.e., the sixth cause of action for fraud - "inasmuch as it does not set forth the claims for fraud or misrepresentation with sufficient particularity under CPLR 3016(b)."¹ Justice Freedman specifically stated on the record during the oral argument on June 26, 2008 that "you have to say that at the time he knew that he wasn't going to be doing that, and that he knew it wouldn't be a good investment." Plaintiff was granted leave to replead within 30 days.

Defendant Juan Perez now moves for an order pursuant to CPLR §§ 3211(a)(7) and 3016(b) dismissing the (Second) Amended Complaint - i.e., the repleaded sixth cause of action for fraud - against him.

¹ All other claims against defendant Perez were dismissed on consent.

The facts alleged in the Amended Complaint are that in October, 2004, plaintiff Paul Eggert considered becoming a shareholder in defendant GCD Recording Studios a/k/a Roc The Mic ("GCD"). Plaintiff claims that defendants represented that GCD was going to be built out and run by a well respected person in the hip hop world, defendant Juan Perez.

Plaintiff further claims that defendants represented at the time that: (i) Perez was a shareholder in GCD; (ii) GCD was a spinoff of Baseline Studios ("Baseline"), managed and owned by Perez; (iii) plaintiff, as an investor in GCD, would benefit from the extraordinary leverage that Baseline, GCD's parent company and Perez "command in the recording business, where gross margins are huge."²

Defendant Perez allegedly informed plaintiff at a meeting in November of 2004 that he would manage GCD to insure the success of

² In addition, plaintiff claims that: (i) defendants Shawnelle Scott, an officer of GCD, and Samuel Albano agreed to execute limited guarantees to entice plaintiff to become involved in the business venture; (ii) defendants Scott and Albano represented that GCD had a contract with Urban Music Atlantic Records that would have resulted in immediate income of \$2200 per day for the new company; and (iii) defendant Albano stated that the corporation would take out an insurance policy to further insure that defendant GCD would repay plaintiff the amount in the promissory note.

the business venture and, based on his success with Baseline, the plaintiff should not hesitate to invest in GCD. Perez also allegedly stated that for marketing purposes "they" were going to change the name of the GCD Recording Studio to Roc The Mic.

Plaintiff subsequently agreed to become a shareholder of defendant GCD and agreed to lend GCD \$360,000 dollars with interest at 6% per annum, payable at no less than \$2,500 monthly, to be used to build out the GCD studio. The entire debt was to be paid off in or before March, 2007, but plaintiff claims that the required payments were never made.³

Plaintiff claims to have later learned that Perez played no role in managing GCD.

The Second Amended Complaint supplemented the allegations of the First Amended Complaint only to the extent of alleging that the representation by defendant that "he would manage GCD was made

³ In addition to the sixth cause of action for fraud, plaintiff's Second Amended Complaint seeks to recover damages against defendants GCD, Scott and Albano for: (i) breach of contract based on their alleged default on a promissory note executed in connection with the loan between the aforementioned defendants and the plaintiff (first cause of action); (ii) breach of implied covenant of good faith and fair dealing (second cause of action); (iii) equitable estoppel (third cause of action); and (iv) promissory estoppel (fourth cause of action). Plaintiff also seeks to recover damages against defendants Scott and Albano for breach of fiduciary duty (fifth cause of action).

[*5]
solely to induce the plaintiff to invest therein. Perez aided and abetted in convincing the plaintiff to invest in [a] new entity, knowing that he was not an active participant of GCD, at that time, and that he never intended to become a part of GCD."⁴

Based on the papers submitted and the oral argument held on the record on December 17, 2008, this Court finds that the Second Amended Complaint fails to cure what Justice Freedman determined to be the infirmities of the First Amended Complaint.

Accordingly, this Court is constrained to grant defendant Perez' motion and to dismiss plaintiff's sixth cause of action against said defendant with prejudice and without costs or disbursements.

Plaintiff's claims against the co-defendants are severed and continued. The remaining parties are directed to appear for a

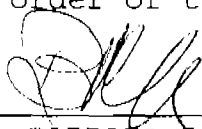
⁴ The sixth cause of action of the (Second) Amended Complaint otherwise alleges, as did the First Amended Complaint, as follows:

35. The defendants intentionally represented to the plaintiff that Juan Perez, an experienced and successful owner in the recording studio industry, would be running GCD. The defendants knew this was false and without any regard as to its truthfulness, they induced the plaintiff to rely on this representation. The plaintiff did justifiably rely on the representations and loaned GCD the aforementioned monies and was damaged as a result of the reliance.

preliminary conference in IA Part 39, 60 Centre Street, Room 208 on
March 18, 2009 at 10:30 a.m.

This constitutes the decision and order of this Court.

Dated: February 10, 2009



BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED
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NEW YORK