

**Shugah Works, LLC v Arts & Exhibitions Intl.**

2014 NY Slip Op 31922(U)

July 27, 2014

Supreme Court, New York County

Docket Number: 154758/13

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

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SHUGAH WORKS, LLC f/k/a  
SHUGAHSOUNDZ LLC,

Plaintiff,

-against-

DECISION AND  
ORDER.

Index No.  
154758/13

ARTS AND EXHIBITIONS INTERNATIONAL, et al.,

Defendants.

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HON. ANIL C. SINGH, J.:

Defendant AEG Live LLC i/s/h/a Arts and Exhibitions International, a Division of AEG Live LCC (“AEG Live”) moves for an order dismissing the complaint as against it pursuant to CPLR 3211(a)(7) for failure to state a cause of action for unjust enrichment, and pursuant to CPLR 3211(a)(1), based on invoices and a written agreement. Plaintiff opposes the motion.

Plaintiff commenced the instant action by filing a summons and complaint on May 22, 2013. The complaint alleges the following facts.

Plaintiff Shugah Works, LLC (“Shugah Works”) provides film editing services. Defendant AEG Live produces large-scale museum exhibitions. Defendant Madison D. Lacy (“Lacy”) is a film maker doing business as

“FireThorn Productions (“FireThorn”).

The first cause of action is against AEG Live. Plaintiff contends that AEG Live produced a traveling exhibition titled “America I Am.” AEG Live engaged Lacy d/b/a FireThorn to produce three short documentary films to be shown at the exhibition. In turn, Lacy engaged plaintiff to perform film editing services for one of the films, called the Gallery 9 film, for a fee.

After plaintiff began editing and completed the rough cut, AEG Live gave substantial direction and orders to plaintiff as to the editing on the film, and took over complete direction and control of the film. Such direction given by AEG Live included extensive, second-by-second directions for editing the film, completely changing the format of the film from a 10-minute film to a film of 5 minutes, 15 seconds, which required extensive editing. As a result, plaintiff incurred substantial cost overruns, far beyond the original contract price with Lacy.

In January 2009, plaintiff delivered a copy of the film to AEG Live, which then made commercial use of the film by showing it for public viewing. Despite displaying the film, AEG Live refused to pay plaintiff for editing services. The first cause of action alleges that AEG Live has been unjustly enriched at the expense of plaintiff.

The second cause of action is against defendant Arts and Exhibitions International, a division of Premier Exhibitions, Inc. ("Premier"), alleging unjust enrichment. The complaint alleges that Premier acquired rights to the America I Am exhibition and the Gallery 9 film; became responsible for debts owed to Shugah Works for its editing services; and benefitted from the work that Shugah Works provided for the Gallery 9 film.

The third cause of action is against defendant Lacy. The complaint alleges that Shugah Works fully performed the services and provided the equipment that it contracted with Lacy to do; Lacy has failed and refused to pay sums due for work on the Gallery 9 film; thus, Lacy owes the sum of \$40,200 plus interest.

#### Discussion

Defendant's first contention is plaintiff may not pursue a quasi-contract cause of action against AEI and/or AEG Live while it simultaneously alleges a breach of contract by Lacy covering the same services in dispute. Defendant asserts that since plaintiff's unjust enrichment cause of action is "indistinguishable" from its cause of action for breach of contract against Lacy, it should be dismissed.

Defendant's contention is meritless. "[A] plaintiff may assert separate theories of liability against separate defendants where two or more defendants may

be responsible for the plaintiff's damages" (84 N.Y.Jur.2d Pleading section 105).

Defendant's second contention is that the complaint fails to state all of the elements of a cause of action for unjust enrichment.

"The essential inquiry in any action for unjust enrichment ... is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173 [2011] (internal quotation marks and citation omitted)). "A plaintiff must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (id.)(internal quotation marks and citations omitted).

In the context of a CPLR 3211 motion to dismiss, the pleadings are to be afforded a liberal construction (Leon v. Martinez, 84 N.Y.2d 83, 87 [1994]). The Court must accept the facts as alleged in the complaint as true, and afford plaintiff the benefit of every favorable inference (id.). Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss (EBC I, Inc. v. Goldman, Schs & Co., 5 N.Y.3d 1, 19 [2005]).

Here, the complaint specifically alleges that AEG Live gave "substantial direction and orders to plaintiff as to the editing of the film." The complaint alleges further that AEG Live profited by showing the film at public exhibitions.

In short, it is clear to the Court that the complaint sufficiently alleges a claim for unjust enrichment.

Accordingly, it is


ORDERED that the motion to dismiss is denied; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 320, 80 Centre Street, on October 15, 2014, at 9:30 AM.

The foregoing constitutes the decision and order of the court.

Date: 7/22/14  
New York, New York

  
Anil C. Singh

JUL 22 2014

**HON. ANIL C. SINGH  
SUPREME COURT JUSTICE**