Mestrovic v Serum Versus Venom, LLC
2015 NY Slip Op 32009(U)
October 16, 2015
Supreme Court, New York County
Docket Number: 155204/12
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - Part 42

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AEROSYN-LEX MESTROVIC,

Plaintiff,

-against-

SERUM VERSUS VENOM, LLC, KEYSTONE DESIGN STUDIOS INC., KEYSTONE DESIGN UNION, INC., THE KEYSTONE DESIGN UNION, LLC, KEYSTONE DESIGN GROUP, LLC, KEYSTONE DESIGN INC., DAVID WILLIAM GENSLER, and MARGARITA LUKIN

Defendants.

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DECISION AFTER INQUEST

Index No. 155204/12

NANCY M. BANNON, J.

The plaintiff, Aerosyn-Lex Mestrovic ("Mestrovic"), commenced this action asserting claims of breach of contract and violations of the New York State Labor Law against the corporate defendants (together hereinafter "Keystone Design") and breach of bailment and defamation against individual defendant David William Gensler ("Gensler").[1] Keystone Design and Gensler filed a joint answer and asserted counterclaims against Mestrovic for, inter alia, breach of fiduciary duty and conversion.

On September 2, 2014, after the defendants' failure to appear for multiple court conferences, this Court granted Mestrovic's motion for a default judgment as against all defendants to the extent that an inquest was directed to be held. The inquest was held on January 21, 2015 and continued on March 4, 2015. Mestrovic testified on his own behalf and presented documentary evidence. Neither the defendants nor their newly-retained counsel appeared for the inquest on January 21, 2015. However, a per diem attorney appeared on behalf of the defendants and was permitted to observe. On February 23, 2015, Gensler moved

[1]Although the original complaint asserted a cause of action against defendant Margarita Lukin for breach of bailment, that claim was abandoned by the filing of the second amended complaint, which asserted no claims against her. No claims against her were mentioned at the inquest or the plaintiff's post-inquest memorandum of law.

by order to show cause to vacate his default on the grounds that he failed to receive notice of the scheduled conferences, which the court denies in a separate order.

The court credits the testimony of Mestrovic in its entirety and, based on that testimony and the exhibits admitted into evidence, makes the following findings of fact and conclusions of law.

Findings of Fact

Mestrovic is a graphic designer and visual artist who was employed by Gensler, the founder of Keystone Design, at defendants Serum Versus Venom, LLC and Keystone Design Union from mid-2005 through November 1, 2011. Mestrovic began working as an unpaid intern, was then engaged as an independent contractor, and worked his way up to the title of Creative Director of Keystone Design Union. In or around July 2010, Gensler and Mestrovic entered into an oral employment agreement, whereby Mestrovic would be paid $3,000 every two weeks, for a total of $6,000 per month, as compensation.

Subsequently, Mestrovic was not paid in accordance with the agreement. Gensler acknowledged the failure to pay in an email dated November 16, 2010, which was admitted into evidence. In that email, Gensler told Mestrovic that he would be paid "the back debt of $24,000" by January 1, 2011, "plus any monies owed between todays [sic] date and the date of the agreed payment." As of December 1, 2010, Mestrovic was paid a total of $20,000, leaving a balance of $4,000 in unpaid wages. After December 1, 2010, Gensler failed to make any payments to Mestrovic until February 23, 2011, including the $4,000 in prior unpaid wages and any salary due between December 1, 2010 and February 23, 2011, amounting to $15,000 for that period.

On February 12, 2011, Gensler executed a signed writing in Mestrovic's presence, which incorporated the November 16, 2010 email. Specifically, the writing, which was signed by Gensler on behalf of The Keystone Design Union in the presence of Mestrovic, stated that Mestrovic was "to be paid 3K per 2 week Cycle, 6K per month," in accordance with "the spoken operating agreement between [Mestrovic] and David Gensler (The Keystone Design Union)." The writing thus confirmed that Gensler and Mestrovic had entered into an employment agreement, whereby Mestrovic's salary would be $6,000 per month, to be paid $3,000 every two weeks. The writing further verified that Keystone Design had failed to pay Mestrovic his salary in accordance with the agreement and confirmed that Mestrovic was owed a total of $19,000 as of February 12, 2011. The February 12, 2011, writing was admitted into evidence.

Mestrovic maintains that the $19,000 was never paid. He received paychecks from defendant Keystone Design Studios, Inc. between February 23, 2011 and July 22, 2011, which were admitted into evidence, although they were not issued every two weeks per the agreement and some payments were only partial. In total, Mestrovic was owed $2,500 for the period from February 23, 2011 to July 22, 2011. Mestrovic received no further payroll checks after July 22, 2011 even though he remained employed by the defendants until November 1, 2011.

On November 1, 2011, Gensler fired Mestrovic via email, admitted into evidence, stating, "effective today, November 1, your position as Creative Director and Partner of The Keystone Design Union has been terminated." Gensler stated that Mestrovic "refuse[d] to contribute to the day to day requirements of running this business, including operations, new business, membership recruitment or upkeep, or even filling out proper employment forms for taxation or insurance," that Mestrovic had been present for only "20% of the possible working days since July 2011," and that his "actions (or lack thereof) ha[d] knowingly impeded our ability to secure new business, maintain healthy staff morale and conduct the day to day functions required of a company in our industry."

Ten days later, on November 11, 2011, after receiving a telephone call from a friend telling him to check his Facebook and email accounts, Mestrovic discovered several posts made by Gensler to Gensler's Facebook page, visible to his thousands of Facebook contacts, including Mestrovic. These posts, copies of which were entered into evidence, claimed that Mestrovic (1) was using a false identity, (2) had been infected with HIV, (3) was leading a homosexual lifestyle, and (4) was under investigation by the Internal Revenue Service and various other governmental agencies. Gensler claimed that Mestrovic had stolen all of the artwork and designs that Mestrovic held out to be his own and warned his contacts not to work with Mestrovic.

Around the same time, Gensler accessed Mestrovic's personal email account and then used Mestrovic's email account to send emails to colleagues with whom Mestrovic was working or hoped to work. Gensler told them not to hire Mestrovic for future projects because Mestrovic had stolen all of Gensler's artwork and was a fraud. Copies of each of these emails were admitted into evidence. As a result of such communications, Mestrovic lost the opportunity to work on additional projects with such individuals. Specifically, Gensler sent an email from Mestrovic's personal account to Terence Teh and William Rowe, two colleagues at an agency in London, England with whom Mestrovic had a contract for a project. Gensler told them that Mestrovic was a fraud and had stolen assets from Keystone Design, and that if they continued doing business with Mestrovic he would find them and do harm to their business, signing the

email, "Very Best, David Gensler, CEO, The Keystone Design Union." Mestrovic had also worked on a project fro Dell computers with an individual named Kim Smith, and was in contact with her in regard to two other projects around November 2011. Gensler called Smith and repeated the same accusations. The projects being discussed with Smith were worth $8,000, and Mestrovic lost that opportunity after Gensler's call to her. Mestrovic maintains that Gensler's posts on Facebook and emails and calls to former colleagues harmed his professional reputation and impeded his ability to obtain work after his departure from Keystone Design, and did so in a "serious" and "long-lasting" manner.

Gensler also sent several emails from Mestrovic's email account to Mestrovic's then-girlfriend, stating that she should "get[] testing for HIV and other bugs," implying that Mestrovic had given her HIV or another sexually transmitted disease. The email further suggested that Mestrovic had been unfaithful to her and had defrauded Gensler and Keystone Design.

Mestrovic maintains that all such statements were false, that he never stole designs or other assets from Keystone Design, that he has never been investigated by the IRS, and that he has never been infected with HIV or any other sexually transmitted disease.

During the time he was employed by Keystone Design, Mestrovic requested permission from Gensler to store certain of his personal belongings in the garage at the Keystone Design office, as he was in the process of moving to a new apartment. Gensler agreed to allow Mestrovic to store these items, including books, clothing, and electronics as well as three original paintings that Mestrovic had created. Mestrovic had created the paintings using his own time, with his own paints and inks, as part of a series of paintings created for an exhibition in Washington, D.C., in which Mestrovic was invited to participate. His other paintings in the series sold at the exhibition for $3,000 each. When Mestrovic delivered his belongings to the garage, they were "in perfect condition."

At the time he was fired from Keystone Design, Mestrovic's personal property was still stored at the offices. For over two weeks after his termination, Gensler refused to allow Mestrovic to access the offices to collect his personal items. At some time between November 15, 2011 and November 19, 2011, Mestrovic was allowed to retrieve some of his personal belongings. When he recovered his clothing and electronics, his clothing was ripped, his electronics were smashed and unusable, and soiled cat litter and cat excrement had been stuffed into the pockets of his clothing and inserted into the electronics. Photos of Mestrovic's damaged property were admitted into evidence. Mestrovic requested multiple times to retrieve the three paintings stored at the office, but Gensler failed to return them.

Subsequently, Gensler left voicemail messages on Mestrovic's cell phone, threatening him with physical harm. Mestrovic testified that he recognized Gensler's voice and that Gensler said he would "have my hands broken, my face bloodied in front of friends. That I would be beaten up in front of people. That I was not safe. That he would find me; that he'd break my head open ... that if I didn't comply with whatever he was asking, that bodily harm would be done and he'd beat me up." On December 2, 2011, Gensler left a voicemail message on Mestrovic's personal phone, threatening to "beat [his] [expletive] face in and break [his] [expletive] hands." On March 2, 2012, Gensler left another voicemail message on Mestrovic's phone claiming that "right now, this is war," that he would "kill the horses, burn the [expletive] villages, and kill every [expletive] thing in sight." As a result of these communications, Mestrovic contacted the police and Gensler was charged with aggravated harassment in the second degree. Gensler pleaded guilty to disorderly conduct and the court issued a two-year order of protection in favor of Mestrovic.

Conclusions of Law

Breach of Contract against Keystone Design

The plaintiff established a prima facie cause of action for breach of contract by showing (1) the existence of a contract, (2) his own performance under the contract; (3) the defendants' breach of that contract, and (4) resulting damages. See Morpheus Capital Advisors LLC v UBS AG, 105 AD3d 145 (1st Dept. 2013). He further established that, although the agreement was initially oral, it was subsequently confirmed in writing, thereby removing it from any bar under the statute of frauds. See General Obligations Law § 5-701(a)(1); In re Urdang, 304 AD2d 586 (2nd Dept. 2003). Where a party submits a "note, memorandum or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought," there is sufficient evidence of the existence of a contract. See General Obligations Law § 5-701(3)(d). When any such agreement "is complete, clear and unambiguous on its face, [it] must be enforced according to the plain meaning of its terms." Greenfield v Philles Records, Inc., 98 NY2d 562, 569 (2002); see MHR Capital Partners LP v Presstek, Inc., 12 NY3d 640 (2009); Ashwood Capital, Inc. v OTG Management, Inc., 99 AD3d 1 (1st Dept. 2012); 150 Broadway N.Y. Assocs. LP v Bodner, 14 AD3d 1 (1st Dept. 2004). The plaintiff's evidence further established that, even in the absence of the subsequent writing, Gensler's partial performance removed the oral agreement from the operation of the statute of frauds since Gensler's "actions are 'unequivocally referable' to the alleged oral agreement." Last Time

Beverage Corp. v F & V Dist. Co., LLC, 98 AD3d 947, 952 (2nd Dept. 2012); see Rose v Spa Realty Assocs., 42 NY2d 338 (1977).

As found by this court, the parties entered into an oral employment contract which was later confirmed in writing. In July 2010, the parties orally agreed that Mestrovic would receive a salary of $6,000 per month, in November 2010 Gensler acknowledged by email that Mestrovic had no been paid in accordance with the oral agreement, and would be paid "back debt", and in February 2011, Gensler confirmed the oral agreement in writing, which paper was signed by Gensler on behalf of The Keystone Design Union in the presence of Mestrovic and stated that Mestrovic was to be paid $6,000 per month or $3,000 bi-weekly in accordance with "the spoken operating agreement between [Mestrovic] and David Gensler (The Keystone Design Union)."

The testimony and evidence presented at the inquest established that Mestrovic performed under the agreement, but that Keystone Design, even though it partially performed, breached the agreement by failing to pay Mestrovic his full salary on several occasions. Mestrovic submitted checks establishing that he was paid $3,000 every two weeks in accordance with the oral agreement at some points during this period of time, but that Keystone Design failed to pay him his salary on several occasions. In the February 2011 writing memorializing the oral agreement, Gensler, on behalf of Keystone Design, also admitted the failure to pay Mestrovic the balance of unpaid wages owed as of November 16, 2010 and his total salary due during the period from December 1, 2010 to February 23, 2011.

Further, Keystone Design failed to pay Mestrovic any salary due to him under the written agreement from July 22, 2011 through his termination on November 1, 2011. The evidence presented by Mestrovic establishes that, although, according to the parties' agreement, Mestrovic should have been paid a total of $69,000 in salary from December 1, 2010 to November 1, 2011, he received only $27,500, leaving $41,500 unpaid for that period. In addition, the evidence established that the $4,000 in unpaid wages from the July 2010 to November 16, 2010 period was never paid. Accordingly, Keystone Design breached the parties' oral and written employment agreement by failing to pay Mestrovic a total of $45,500.

Violations of New York State Labor Law against Keystone Design

Based on the same evidence presented in support of his breach of contract claim, Mestrovic established Keystone Design's violation of Labor Law § 193, which prohibits employers from making "any deduction from the wages of an employee" unless such deduction

is made in accordance with the law or is expressly authorized by, and for the benefit of, the employee. See Labor Law §193. Indeed, Keystone Design admitted that it failed to pay Mestrovic his salary in accordance with the parties' agreement. Such admission established that Keystone Design's failure to pay his full salary was not an authorized deduction, such as payment for insurance premiums or pension or healthcare benefits. See Labor Law § 193(1)(b). Mestrovic, therefore, established that he was entitled to the unpaid wages and that Keystone Design violated Labor Law § 193 by failing to pay him the full amount of wages due in accordance with the employment agreement. See Ryan v Kellogg Partners Institutional Svs., 19 NY3d 1 (2012); Epelbaum v Nefesh Achath B'Yisrael, Inc., 237 AD2d 327 (2nd Dept. 1997).

While Mestrovic may not, and does not, seek a double recovery of the same unpaid wages under both his cause of action for breach of contract and his violation of the Labor Law cause of action (see e.g. Lazar, Sanders, Thaler & Assocs., LLP v Lazar, 131 AD3d 1133 [2nd Dept. 2015]), his demonstration of a violation of a provision of Labor Law article 6 entitles him to an award of liquidated damages in the amount of $45,500 under Labor Law § 198(1-a). See Ryan v Kellogg Partners Institutional Svs., supra; Epelbaum v Nefesh Achath B'Yisrael, Inc., supra; cf. Slotnick v RBL Agency Ltd., 271 AD2d 365 (1st Dept. 2000). Labor Law § 198(1-a), provides for "liquidated damages equal to a hundred percent of the total amount of wages found to be due" under Labor Law § 193, and requires that the court allow such recovery "unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law." Having failed to appear at the hearing, Keystone Design made no such showing. Furthermore, pursuant to Labor Law § 198(4), if any amounts remain unpaid after 90 days after judgment or 90 days after the expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of the judgment shall automatically increase by 15%.

Breach of Bailment against Gensler

To recover for breach of bailment, a plaintiff must establish "lawful possession, and the duty to account for the thing as the property of another, that creates the bailment, whether such possession results from contract or is otherwise lawfully obtained...Taking lawful possession without present intent to appropriate causes a bailment." Pivar v Graduate School of Figurative Art of the New York Academy of Art, 290 AD2d 212, 212 (1st Dept. 2002) [internal quotation marks omitted]; see Martin v Briggs, 235 AD2d 197 (1st Dept. 1997). When a bailment is created, a duty to act with reasonable care is imposed on the recipient. See Tweedy v Bonnie Castle Yacht Basin, Inc., 73 AD3d 1455 (4th Dept. 2010); Pivar v Graduate School of Figurative Art of the New York Academy of Art, supra. Where property entrusted to another is delivered in

good condition and returned in damaged condition, it is presumed that such damage was the result of the defendant's negligence. See Tweedy v Bonnie Castle Yacht Basin, Inc., supra. Similarly, "[a]fter a bailor delivers property to a bailee, failure to return it raises the presumption of liability on the part of the bailee." Weinberg v D-M Rest. Corp., 60 AD2d 550 (1st Dept. 1977).

Here, Gensler's acceptance of Mestrovic's property to be temporarily stored at Keystone Design created a bailment, which imposed a duty on Gensler to act with reasonable care. Mestrovic established that Gensler breached the duty owed to Mestrovic by willfully damaging and withholding his personal property. The evidence presented by Mestrovic established that, when he delivered his property, including electronics and clothes, to Keystone Design, his property was in good condition and when it was returned it was significantly damaged. Mestrovic estimated the value of these items to be approximately $3,000. Mestrovic also established that he left three original paintings in Gensler's care, who refused to return them when requested. Mestrovic established that he created the paintings with his own materials and outside the hours he worked at Keystone Design. Mestrovic testified that the paintings were a part of a series he created in which each piece was priced between $3,000 and $5,000. Three other works in the series sold for $3,000 each. Accordingly, Gensler is liable to Mestrovic in the amount of $12,000 for breach of bailment.

Defamation against Gensler

"Defamation is the making of a false statement about a person that 'tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him [or her] in the minds of right-thinking persons, and to deprive him [or her] of their friendly intercourse in society' (Rinaldi v Holt, Rinehart & Winston, 42 NY2d 369, 379 [1977], *cert denied* 434 U.S. 969 [1977]). The elements are false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se' (Dillon v City of New York, 261 AD2d 34, 38 [1st Dept. 1999]. A statement is defamatory on its face if it suggests improper performance on one's professional duties or unprofessional conduct (Chiavarelli v Williams, 256 AD2d 111 (1st Dept. 1998)." Frechtman v Gutterman, 115 AD3d 102, 104 (1st Dept. 2014). No special damages need be shown when a statement tends to injure the plaintiff's trade, business or profession, falsely charges the plaintiff with a serious crime, indicates that the plaintiff has a loathsome disease, or imputes to the plaintiff unchastity and thereby constitutes defamation per se. See Liberman v Gelstein, 80 NY2d 429 (1992); Geraci v Probst, 61 AD3d 717 (2nd Dept. 2009); Nacinovich v Tullet & Tokyo Forex, Inc., 257 AD2d 523

(1st Dept. 1999). "When statements fall within one of these categories, the law presumes that damages will result, and they need not be alleged or proven." Liberman v Gelstein, supra at 435; Gatz v Otis Ford, Inc., 274 AD2d 449 (2nd Dept. 2000).

Remarkably, the hearing evidence shows that defendant Gensler's conduct constitutes defamation per se under all of the categories. Mestrovic established at the hearing that Gensler accused him of stealing assets from Keystone Design and of tax evasion, that he was infected with HIV or AIDS, claimed that he was unfaithful to his then-girlfriend and led a lifestyle under a false identity, and contacted several individuals with whom Mestrovic had business relationships to discourage them from doing further business with him. Mestrovic testified that these statements were false and that Gensler knew them to be false at the time he made them, shortly after Gensler terminated Mestrovic's employment.

In addition, Mestrovic established that Gensler's defamatory statements were widely disseminated and motivated by a desire to destroy his business relationships and professional reputation. Gensler's Facebook posts, visible to thousands of his contacts, showed that he intended to damage Mestrovic's reputation so that he would "never be able to work again." Gensler also directly contacted individuals with whom Mestrovic had worked or planned to work with, using Mestrovic's personal email account without his permission, to discourage such individuals from working with him.

In cases involving defamation per se, "while the existence of compensatory damages is presumed, the quantum of such damages is not." See Gatz v Otis Ford, Inc., supra at 450. At the hearing, Mestrovic sought $50,000 in compensatory damages on the defamation claim. The court finds that his proof supports an award in that amount. He credibly testified that the value of the projects he lost with Kim Smith was $8,000, and that he had lost at least several more in the months and years following. His proof concerning his salary also established that he could earn $6,000 per month for the same or similar work. The damages resulting from Gesler's girlfriend and others about Mestrovic's health can also be presumed, although no evidence was presented at the hearing in that regard. In any event, by defaulting, the defendant forfeited the opportunity to rebut the presumption of damages and challenge the amount of damages claimed. Id. Accordingly, Mestrovic established Gensler's liability for defamation and entitlement to $50,000 in damages. See Allen v CH Energy Group, Inc., 58 AD3d 1102 (3rd Dept. 2009) [reduction of jury award to $50,000 for defamation per se was warranted where there was no evidence of wide dissemination of defamatory statements and where the plaintiff did not suffer any adverse employment consequences and there was little proof of other impact on the plaintiff]; Greico v Galasso, 297 AD2d 659 (2nd Dept. 2002) [compensatory damages of

$35,000 found reasonable where defendant affixed a sign to his car saying that the plaintiff was wealthy but refused to pay child support and parked it in a highly visible area near where the plaintiff worked]; Rombom v Weberman, 2002 WL 1461890, 2002 NY Slip Op 50245(U) (Sup Ct Kings County, 2002), *aff'd* 309 AD2d 844 (2nd Dept. 2003) [compensatory damages award of $350,000 against three defendants appropriate where defamatory statements widely disseminated and caused plaintiff to lose a significant amount of business].

At the inquest, Mestrovic also requested an award of $100,000 in punitive damages on the defamation claim. It is well settled that "[p]unitive or exemplary damages have been allowed in cases where the wrong complained of is morally culpable, or is actuated by evil and reprehensible motives, not only to punish the defendant but to deter him, and others who might otherwise be so prompted, from indulging in similar conduct in the future." Walker v Sheldon, 10 NY2d 401, 404 (1961). In light of the nature of the conduct complained of, which is clearly spiteful and malicious, this is one of those "exceptional cases" warranting punitive damages. See Marinaccio v Town of Clarence, 20 NY3d 505, 511 (2013). The court finds that an award of punitive damages in the sum of $50,000 is appropriate in this case.

The court notes that no request for attorney's fees pursuant to Labor Law § 198(1-a) was made in the second amended complaint, at the inquest or in Mestrovic's memorandum of law. Further, although the second amended complaint includes demands for declaratory and other injunctive relief, Mestrovic did not request such relief at the inquest nor address the issue in his memorandum of law, wherein he requests only monetary damages.

Conclusion

Mestrovic met his burden at the inquest by demonstrating that the defendants are liable for breach of contract, breach of bailment, and defamation and that he is entitled to damages in the amount of $45,500 for breach of contract, $45,500 in liquidated damages pursuant to Labor Law § 198(1-a), $12,000 for breach of bailment and, on the defamation claim, $50,000 in compensatory and $50,000 in punitive damages. Therefore, the court grants judgment in favor of Mestrovic and against the defendants in the total amount of $203,000.

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment is granted after a hearing, and it is further,

ORDERED that the plaintiff is awarded judgment against defendants Serum Versus Venom, LLC, Keystone Design Studios Inc., Keystone Design Union, Inc., The Keystone Design Union, LLC, Keystone Design Group, LLC, and Keystone Design, Inc., jointly and severally, for breach of contract in the amount of $45,500 plus statutory interest from July 22, 2011, and it is further

ORDERED that the plaintiff is awarded judgment against defendants Serum Versus Venom, LLC, Keystone Design Studios Inc., Keystone Design Union, Inc., The Keystone Design Union, LLC, Keystone Design Group, LLC, and Keystone Design, Inc., jointly and severally, pursuant to Labor Law § 198(1-a) in the amount of $45,500 plus statutory interest from July 22, 2011, and it is further

ORDERED that if the above amount awarded under Labor Law § 198 remains unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of the judgment shall automatically increase by fifteen percent (15%), and it is further,

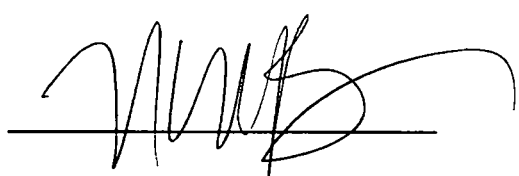
ORDERED that the plaintiff is awarded judgment against defendant David William Gensler for breach of bailment in the amount of $12,000 plus statutory interest from November 1, 2011, and it is further,

ORDERED that the plaintiff is awarded judgment against defendant David William Gensler for defamation in the amount of $100,000, plus statutory interest from November 1, 2011, and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

Dated: October 16, 2015



NANCY M. BANNON, J.S.C.