

<b>Hey Jude Prods., Inc. v Simon</b>
2019 NY Slip Op 31015(U)
April 8, 2019
Supreme Court, New York County
Docket Number: 150464/2018
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X

INDEX NO. 150464/2018

HEY JUDE PRODUCTIONS, INC.,

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION AND ORDER

TAMAR SIMON and MEAN STREETS MANAGEMENT,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this conversion action commenced by plaintiff Hey Jude Productions, Inc. (“Hey Jude”), defendants Tamar Simon (“Simon”) and Mean Streets Management (“MS Management”) move, pursuant to CPLR 3211(a)(1), (7), and (8), to dismiss Hey Jude’s claim of \$50,000 in punitive damages. Hey Jude opposes the motion. After oral argument, and after a review of the parties’ papers and the relevant statutes and caselaw, it is ordered that the motion is **granted**.

The parties acknowledge that they entered into a contract in or about January of 2017. (Docs. 9 at 1; 44 at 2.) Hey Jude is a film company that produced a movie entitled “On the Map” about the Israeli basketball team that won the 1977 European Championship. (Doc. 44 at 2.) Simon claims that she entered into an oral contract with Hey Jude to design and implement a distribution and marketing plan for the film.<sup>1</sup> (Doc. 9 at 1–2.) She also claims that, pursuant to their oral

<sup>1</sup> Defendant MS Management is an entity that Hey Jude believed defendant Simon operated. (Doc. 44 at 1–2.) According to the first amended complaint, MS Management ran a website which stated that it was “[h]ighly experienced and specialized in Independent Film Distribution, Strategy, Marketing, Outreach and Partnerships . . . .”

contract, she was to receive \$3,000 at the beginning of each month to compensate her for her work. (*Id.* at 1.) In June of 2017, the parties began negotiations for Simon to receive additional compensation. (*Id.* at 2.) However, in August of 2017, plaintiff fired Simon due to profound disagreements about the way she was handling finances. (Doc. 19.) In particular, Simon alleges that she had made a deal with a previous client of hers, the American Israel Public Affairs Committee (“AIPAC”), to screen the film. (Doc. 9 at 5–10.) Hey Jude alleges that Simon directed AIPAC to send her a check in the amount of \$17,400 for screening the film, which violated the terms of Hey Jude’s and Simon’s oral contract, since the payments were to be made directly to plaintiff. (Docs. 9 at 7; 49 at 1–2)

Hey Jude commenced this action against defendants on October 3, 2017 by filing a summons and complaint. (Doc. 42.) In the complaint, Hey Jude asserted one cause of action for conversion. (*Id.* at 2.) Plaintiff’s requested relief was for compensatory damages in the amount of \$42,000 and punitive damages in the amount of \$160,000. (*Id.* at 4.) In its first amended complaint filed on December 19, 2017, plaintiff reduced the amount demanded in the ad damnum clause to seek compensatory damages of \$17,400 and punitive damages of \$50,000. (Doc. 44 at 4.)

Defendants now move to dismiss the requested relief for punitive damages as well as the entire complaint as against defendant MS Management.<sup>2</sup> Upon reviewing the parties’ papers and the relevant caselaw, this Court grants the motion. Plaintiff has failed to establish that Simon’s actions rose to the level of “morally culpable conduct” for which punitive damages may be awarded. (*See Cook v Hartford Fire Ins. Co.*, 97 AD2d 731, 731 [1st Dept 1983] (denying to award punitive damages where plaintiff made no showing of “fraudulent, criminal or dishonest acts”

---

(*Id.* at 2.) In fact, in multiple e-mails attached as exhibits to the motion papers, MS Management appears under defendant Simon’s signature. (*See, e.g.*, Doc. 36–37.)

<sup>2</sup> At oral argument, Hey Jude withdrew, on the record, all claims as against defendant MS Management.

affecting “the general public”); *see also Halpin v Prudential Ins. Co. of Am.*, 48 NY2d 906, 907 [1979] (denying plaintiff’s request for punitive damages where the cause of action was grounded in private breach of contract.) Therefore, pursuant to CPLR 3211(a)(1), the request for punitive damages must be dismissed, since the documentary evidence submitted is insufficient to award the same.

In accordance with the foregoing, it is hereby:

**ORDERED** that the motion by defendants Tamar Simon and Mean Streets Management to dismiss the claim for punitive damages as set forth in the first amended complaint of plaintiff Hey Jude Productions, Inc. is granted; and it is further

**ORDERED** that the complaint is dismissed as against defendant Mean Streets Management; and it is further

**ORDERED** that the action is severed and continued against remaining defendant Tamar Simon; and it is further

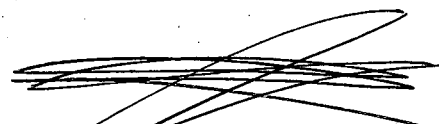
**ORDERED** that the caption be amended to reflect the dismissal of Mean Streets Management and that all future papers filed with the court bear the amended caption; and it is further

**ORDERED** that, within 30 days after this order is filed with NYSCEF, counsel for defendant is to serve a copy of this order with notice of entry on all parties and on the General Clerk's Office at 60 Centre Street, Room 119, and the Clerk is directed to note the change in the caption; and it is further

**ORDERED** that the parties are to appear for a preliminary conference on July 16, 2019 at 2:15 PM in Room 280 at 80 Centre Street; and it is further

**ORDERED** that this constitutes the order and decision of this Court.

4/8/2019  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: