

Hindlin v Prescription Songs LLC
2019 NY Slip Op 33550(U)
November 25, 2019
Supreme Court, New York County
Docket Number: 651974/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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JACOB HINDLIN,

Plaintiff,

- v -

PRESCRIPTION SONGS LLC, KASZ MONEY, INC.

Defendants.

INDEX NO. 651974/2018

MOTION DATE N/A

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 142, 143, 145, 147, 151

were read on this motion to/for REARGUMENT/RECONSIDERATION

Masley, J.:

"A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979] [citations omitted]; see CPLR 2221 [d]).

Defendants' motion to renew their motion to dismiss is denied for failure to establish grounds for reargument. The motion to dismiss is denied for the reasons stated in the July 5, 2019 decision and as explained more fully below. (NYSCEF Doc. No. [NYSCEF] 136). The issue here is how to calculate the term of the contract and Prescription's option periods. Relevant to this decision are the following dates:

- On November 23, 2010 plaintiff Jacob Hindlin and defendant Prescription Songs LLC (Prescription) entered into a Co-Publishing Agreement in perpetuity.

(NYSCEF 52). Simultaneously, Hindlin and defendant Kasz Money Inc., controlled by Lukasz Gottwald, entered into an exclusive production agreement. (*Id.*).

- On June 30, 2014, Hindlin and Prescription entered into one-year Co-Publishing Agreement pursuant to which Prescription had three options to extend the agreement for three years (2014 Co-Pub Agreement). (NYSCEF 54).

- On July 20, 2015, Hindlin sent Prescription notice that he had satisfied the MDRC for the initial period of the 2014 Co-Pub Agreement. (NYSCEF 55).

- On August 12, 2016, Prescription's counsel sent Hindlin's counsel a letter informing him that Prescription was exercising its option for the First Option Period, effective retroactively on July 20, 2016. (NYSCEF 56 at p. 5; NYSCEF 69 at ¶ 48).

- On November 29, 2017, Hindlin's counsel informed Prescription that Hindlin had fulfilled the MDRC for the current option period. (NYSCEF 57).

- On January 5, 2018, Hindlin's counsel sent notice to Prescription's counsel that Prescription failed to exercise its "option to extend the Term for an Option Period." (NYSCEF 59).

-On January 31, 2018, Prescription's counsel responded that Hindlin was in his first option period and that MDRC fulfillment had not occurred. (NYSCEF 56).

- On February 14, 2018, counsel for Prescription informed Hindlin's counsel that Prescription received confirmation from nonparty Interscope Records of Hindlin's mechanical royalty rate and all of the songs he is on and that Prescription was now exercising its option for the second option period. (NYSCEF 58).

In motion sequence number 002, defendants Prescription Songs LLC and Kasz Money, Inc. moved pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint. The

court denied the motion finding that Hindlin had stated a claim for (1) a declaratory judgment that the term of the 2010 Production Agreement ended on April 26, 2018; (2) a declaratory judgment that the term of the 2014 Co-Pub Agreement ended January 26, 2018; and (3) alternatively a declaratory judgment that the parties are in the third option term of the 2014 Co-Pub Agreement. Further, the court rejected defendants' argument that the documentary evidence – the February 14, 2018 notice - was conclusive that the parties were in the second option period.

On this motion to reargue, Prescription insists that (1) the contract is clear, (2) in its July 5th decision, the court repeatedly acknowledged that the contract is clear, and thus, (3) the complaint must be dismissed. While the court acknowledged that the four requirements that must be satisfied for the MDRC to be “deemed” fulfilled are clear, the contract itself is anything but clear as to logistics. Rather, it appears that Prescription is merging calculation of the term of the agreement (¶3[a]), the first option period (¶3[c]), and the contract period (¶4[b][iii]).

According to Prescription, Hindlin cannot give the required MDRC notice in ¶3(a) until the record company complies with its obligation in ¶4(b)(iv)(b). While ¶4(b)(iv) clearly sets forth the terms in order for the MRDC to be “deemed” fulfilled, it is not clear at this juncture how ¶4(b)(iv) relates to ¶3(a).¹ The issue here is whether Hindlin can give his notice based on his belief of his fulfillment of the MDRC required by ¶3(a) before the record company confirms the Album release pursuant to ¶4(b)(iv). Is the

¹ “(a).....The Initial Period shall commence on the date hereof and shall continue until the date thirty (30) days after the later of the date when Composer (i) sends notice to [Prescription] of the fulfillment of the MDRC (defined below) for the Initial Period and (ii) twelve (12) months after the date hereof (the ‘Option Trigger Date’).”

record company confirming Hindlin's notice, as 4(b)(iv) so states, or must the record company confirm before Hindlin can effectively give notice under ¶3(a), as Prescription argues? Prescription insists that the record company must provide confirmation to Prescription only. If so, then how is Hindlin to know when such confirmation is given, and thus, give notice under ¶3(a). Also, is the provision in ¶3(a) "MDRC (defined below)," a reference to the definition "[Minimum Delivery Commitment] for the Contract Period concerned pursuant to ¶4(b)(i) above ('MDRC') or to the four terms required before "[t]he MRDC shall [] be deemed fulfilled"? (See ¶4[b][iv]). Hindlin has stated a justiciable controversy. (CPLR 3001).

Prescription takes issue with the court's silence in the July 5, 2019 decision and order as to the third cause of action. Since the third cause of action is stated in the alternative and the court explains why it cannot resolve the motion in Prescription's favor as to the second cause of action, it cannot reach the third cause of action.

Defendants' motion for leave to reargue is also procedurally improper in that defendants failed to submit a paper copy of the July 5th decision and order or the papers submitted in connection with the underlying motion pursuant to the Part 48 Rules.² (Defendants' motion to dismiss, motion sequence 002). CPLR 2214 (c) provides: "[e]xcept when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the

² Defendants' submission delivered to the court on November 22, 2019 after the argument is useless to the court and an unnecessary expense to the client. If parties expect the court to be prepared for argument, then they must comply with the Part 48 rules.

docket numbers on the e-filing system" (emphasis added). Instead, defendants only submitted their memo of law which was attached to the Notice of Motion, in violation of Trial Court Rules 202.8 (c) and Part 48 Rule 6, without a supporting affidavit, also in violation of Trial Court Rules 202.8 (c). While the court will exercise its discretion and not deny this motion on procedural grounds, the court implores counsel to comply with the rules so that decisions can be made expeditiously.

Accordingly, the motion is denied.

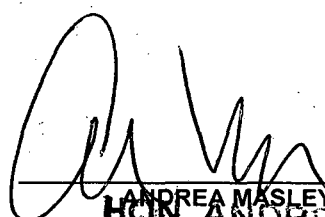
11/25/19
DATE

CHECK ONE: ☐ CASE DISPOSED ☒ DENIED ☒ NON-FINAL DISPOSITION

APPLICATION: ☐ GRANTED ☐ GRANTED IN PART ☐ OTHER

CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ INCLUDES TRANSFER/REASSIGN ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE


ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY