

Collins v Heavy Camp Records, Inc.

2024 NY Slip Op 30853(U)

March 12, 2024

Supreme Court, New York County

Docket Number: Index No. 652502/2022

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

RYAN COLLINS,

Plaintiff,

- v -

HEAVY CAMP RECORDS, INC., JULIEN ANDERSON, and
SAMMIE MARQUEZ BENSON,

Defendants.

-----X

INDEX NO. 652502/2022

MOTION DATE 08/23/2023,
11/01/2023

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78 were read on this motion by defendant Benson to DISMISS THE COMPLAINT.

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, and 97 were read on this motion by plaintiff for DEFAULT JUDGMENT.

LOUIS L. NOCK, J.

Upon the foregoing documents, the motion to dismiss the complaint by defendant Sammie Marquez Benson is granted. Contrary to plaintiff’s argument, a motion to dismiss for failure to state a cause of action may be made at any time (CPLR 3211[e]). The contract between plaintiff and defendant Heavy Camp Records, Inc. (“Heavy Camp”), provides that Benson, also known as “Blac Youngsta,” would perform at an event organized by plaintiff for a “non-returnable flat fee” of \$42,000; \$22,000 of which was to be paid upon execution of the contract and the remainder following the performance (contract, NYSCEF Doc. No. 63, ¶ 2[a]). If plaintiff canceled the performance on fifteen or fewer days’ notice, he was required to pay the remainder of the performance fee, as well as any expenses incurred by Benson (*id.*, ¶ 6).

The parties entered into the agreement on May 18, 2022, and plaintiff made the first payment the next day (wire transfer information, NYSCEF Doc. No. 27). On May 27, 2022, plaintiff informed Heavy Camp's transactional counsel that the performance would be canceled and demanded return of the performance fee (NYSCEF Doc. No. 28). Defendants refused to remit the initial payment.

It is axiomatic that where the parties set down the unambiguous terms of their agreement in writing, the court has no power to vary that writing (*Vermont Teddy Bear Co., Inc. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004]). “The court construe[s] the plain and ordinary meaning of the unambiguous terms and conditions of the agreement” (*Edelman v Chubb Indem. Ins. Co.*, 41 AD3d 327, 327 [1st Dept 2007]). “[C]ourts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing” (*Vermont Teddy Bear Co.*, 1 NY3d at 475).

Here, plaintiff's claims against Benson must be dismissed. Plaintiff asserts that because he canceled the performance on more than fifteen days' notice, he is entitled to the return of the initial payment. However, the contract does not provide for a return of any of the performance fee. Indeed, the contract unambiguously refers to the fee as a “non-returnable flat fee” (contract, NYSCEF Doc. No. 63, ¶ 2[a]). While plaintiff need not provide the remaining payment, as he canceled with sufficient notice, neither is he entitled to return of the initial payment, as the contract simply does not grant him that right.

The causes of action for unjust enrichment and quantum meruit must also be dismissed. “The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter” (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]; *Norcast S.ar.l. v Castle*

Harlan, Inc., 147 AD3d 666, 668 [1st Dept 2017] [“The unjust enrichment claim is also foreclosed by the existence of a valid and enforceable written contract governing the subject matter”]; *Schuit v Tree Line Mgt. Corp.*, 46 AD3d 405, 406 [1st Dept 2007] [“The existence of an enforceable contract covering the disputed issue of plaintiff’s compensation precludes his recovery in quantum meruit”]). Here, the contract between the parties governs the subject matter of plaintiff’s quasi contract claims, and they must be dismissed as duplicative.

For the reasons stated above, plaintiff’s motion for default judgment against all defendants must be denied. “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). However, plaintiff must still “allege enough facts to enable a court to determine that a viable cause of action exists” (*id.*). Here, plaintiff lacks a viable cause of action against the defendants.

Accordingly, it is hereby

ORDERED that the motion of defendant Sammie Marquez Benson to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

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

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that the motion for default judgment is denied.

This constitutes the decision and order of the court.

ENTER:



<u>3/12/2024</u>		<u>LOUIS L. NOCK, J.S.C.</u>
DATE		
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE