

Digital Seven LLC v El-Mohmouh

2025 NY Slip Op 30162(U)

January 15, 2025

Supreme Court, New York County

Docket Number: Index No. 652637/2021

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

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DIGITAL SEVEN LLC and BRENDAN COCHRANE,

Plaintiffs,

- v -

KARIMA EL-MOHMOUH, as administrator of the Estate of Joseph Bryan a/ka/ Taheim Bryan, Deceased, ROB SIMMONS, FIRST BORN PRODUCTION LLC, and JARS PRODUCTIONS, INC.,

Defendants.

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INDEX NO. 652637/2021

MOTION DATE 11/13/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 23, 26, 27, 29, 30, 31, 52

were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 24, 25, 28

were read on this motion to/for DISMISSAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion, pursuant to CPLR § 3211(a)(7), of defendants Rob Simmons and Jars Production, Inc., to dismiss the complaint against them (mot seq no 002) is granted and the complaint is dismissed in its entirety as against such defendants, with costs and disbursements to such defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of such defendants; 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 parties 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 to the extent that it seeks an award of attorneys' fees and/or sanctions against plaintiffs, the motion of defendants Rob Simmons and Jars Production, Inc., is denied; and it is further

ORDERED that the motion, pursuant to CPLR §§ 7503(a) and 7504, of defendants Karima El-Mohmouh, as administrator of the Estate of Joseph Bryan, deceased, and First Born Production LLC to stay this action, compel plaintiffs to arbitrate, and for

the appointment of an arbitrator (mot seq no 001) is granted;
and it is further

ORDERED that to the extent that it seeks an award of attorneys' fees and/or sanctions against plaintiffs, the motion of defendants Karima El-Mohmouh, as administrator of the Estate of Joseph Bryan, deceased, and First Born Production LLC is denied; and it is further

ORDERED that plaintiffs Digital Seven LLC and Brendan Cochrane shall arbitrate their claims against defendants Karima El-Mohmouh, as administrator of the Estate of Joseph Bryan a/k/a Taheim Bryan, Deceased, and First Born Production LLC, in accordance with the Film Production Agreement dated March 30, 2018 (NYSCEF Document Number 002); and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify such stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration; and it is further

ORDERED that, after conferring with each other about their respective preferences for an arbitrator, on or before January 31, 2025, each counsel shall post on NYSCEF, jointly or separately, a list of the full name, business address and telephone number of three arbitrators, who are qualified and have experience in

intellectual property law arbitration, and who are available to conduct the arbitration; and it is further

ORDERED that no later than February 10, 2025, a further order of appointment, pursuant to CPLR § 7504, that designates an arbitrator, selected from the foregoing list(s), shall be issued.

DECISION

This court agrees with defendants Rob Simmons and First Born Production LLC that no cause of action for unjust enrichment lies against them, where there is a valid contract in place and such contract covers the subject matter of the dispute, notwithstanding that they are non-signatories thereto. See Board of Managers of 15 Union Square West Condominium v Azogui, 230 AD3d 405 (1st Dept 2023). However, defendants Rob Simmons and First Born Production LLC are not entitled to recover attorneys' fees, as there is neither contractual nor statutory authority for such an award. See Klein v Sharp, 41 AD2d 926 (1st Dept 1973).

The court concurs with the argument of defendants Karima El-Mohmouh, as administrator of the Estate of Joseph Bryan, deceased, and First Born Production LLC that plaintiffs' claims as against such defendants are subject to arbitration, under paragraph 4 of the Film Production Agreement dated March 30, 2018 (NYSCEF Document Number 012), whose language is clear and unambiguous. Such

defendants are also correct that the non-signatory plaintiff Digital Seven LLC and non-signatory defendant First Productions LLC must arbitrate under the Agreement. See Matter of SSL Intern., PLC, v Zook, 44 AD3d 429 (1st Dept 2007).

This court declines to award attorneys' fees or sanction plaintiffs for bringing this action against defendants Karima El-Mohmouh, as administrator of the Estate of Joseph Bryan, deceased, and First Born Production LLC. Unlike plaintiff in Feffer v Goodkind, Wechsler, Labaton & Rudoff, 183 AD2d 678 (1st Dept 1992), who argued that his claims were not arbitrable, plaintiffs at bar concede that the dispute must be arbitrated. Furthermore, the delays in resolution of the instant dispute are largely attributable to the death of defendant Joseph Bryan a/k/a Taheim Bryan, automatic stay triggered by such death, and proceedings to substitute the personal representative of his estate. Nor will the court sanction such defendants for seeking sanctions against plaintiffs. Of course, the party that prevails in the arbitration will be entitled to an award of reasonable attorneys' fees under paragraph 18 of the Agreement.

Debra A. James

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1/15/2025

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE