SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREA MASLEY** **PART** 48

Justice

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MATTHEW WHITE,

INDEX NO. 652585/2015

Plaintiff,

- v -

BRAD DAVIDSON, DANIEL PEARSON, THINK SAY RECORDS, and THINK SAY MUSIC, LLC,

Defendants.

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This action arises from a recording contract between plaintiff Matthew White[1] and "Think Say Music LLC" (TSM) (Contract)[2] pursuant to which plaintiff agreed to pay TSM $500,000 and TSM agreed to release plaintiff's song Love, pay royalties, send royalty statements twice a year, and maintain books of account for sale, distribution and exploitation of recordings which accounting statements are to be made available to plaintiff's accountant once a year.[3] (NYS Court Electronic Filing [NYSCEF] 2, October 28, 2014 Contract.)

[1] Plaintiff is a musician whose song Love and Affection was the theme song for the 2013 season of the Bachelorette. (NYSCEF 362, Plaintiff, Jan. 25, 2025 tr 5:5-9:2; 9:19-17:9; NYSCEF 360, Plaintiff, June 11, 2025 tr 32:2-13, 61:24-97:10.) Because of the publicity generated by this program, plaintiff decided to promote another song entitled Love. (NYSCEF 362, Plaintiff, Jan. 25, 2025 tr 17:18-18:16. NYSCEF 362, Plaintiff, Jan. 23, 2025 at 20:11-21:6.)

[2] The contract is dated October 28, 2014, but plaintiff executed it in December 2014. (NYSCEF 2, Contract; NYSCEF362, Plaintiff, Jan. 24, 2025 tr 29:5-7.)

[3] The contract claim was dismissed because plaintiff failed to assert any violation of TSM's stated duties under the contract, many of which are discretionary in any case. (NYSCEF 2, October 28, 2014 Contract; NYSCEF 17, J. Oing, Jan. 12, 2016 tr 18:12-20: 2.)

OTHER ORDER – NON-MOTION

Plaintiff initiated this action for fraudulent inducement against defendants Brad Davidson, Daniel Pearson,[4] and TSM.[5] (NYSCEF 15, January 13, 2016 decision dismissing claims for breach of contract, conversion and fraud; affirmed, *White v Davidson*, 150 AD3d 610 [1st Dept 2017][6].) Plaintiff alleges "that defendants fraudulently induced him to enter into an exclusive recording agreement and to provide $500,000 to them by making certain promises or claims, including that (1) their record label was highly successful and that they had previously successfully represented famous recording artists; (2) they would promote plaintiff's music to radio broadcasting venues; (3) they would organize marketing events to promote plaintiff's single; (4) they would organize a radio tour; and (5) they would promote the re-release of the single around Valentine's Day 2015." *(White v Davidson*, 150 AD3d 610 [1st Dept 2017].)

Plaintiff did not pay TSM $500,000. Rather, J. Christopher Burch paid TSM on plaintiff's behalf: $400,000 before plaintiff executed the contract with TSM and $100,000 after the contract was executed. (NYSCEF VEC 4, Bank statements showing April 4, 2014 transfer of $250,000; July 21, 2014 transfer of $150,000; December 2, 2015 transfer of $100,000.)[7] Plaintiff executed a note on November 25, 2014 acknowledging his debt to Burch. (NYSCEF 141, Note.) On August 5, 2022, Burch and plaintiff executed a Joint Release that waived any and all claims, actions or causes of action

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[4] Action discontinued against defendant Pearson. (NYSCEF 211, stipulation of Discontinuance.)
[5] Think Say Records appears to be a DBA for TSM. Davidson denies any knowledge of or connection to Think Say Records, but admittedly his email address is brad@thinksayrecords.com. (NYSCEF 361, Davidson June 12, 2025 tr 119:7-9.)
[6] Appellate decision also found at NYSCEF 187, May 30, 2017 Remittitur affirming 2016 decision.
[7] The court implores the parties to use meaningful labels in NYSCEF and VEC. Labeling a document an "exhibit" is useless.

that Burch could have against White "arising from or relating to the Promissory Demand Note in the principal amount of $500,000 dated November 25, 2014." (VEC 1- 67, Release.)

On October 25, 2019, the court found TSM in default for failing to engage counsel, after TSM's initial counsel was relieved (NYSCEF 208), as required by CPLR 321 and TSM failed to engage in discovery or appear at conferences. (NYSCEF 230, Default Decision; NYSCEF 324, February 20, 2024 Decision referring TSM to Special Referee for damages inquest.) Current counsel Eric Rosen, Esq. appeared in this action for TSM on March 27, 2024 soon after the court directed this inquest. This decision follows the court's inquest on damages against TSM, the only defaulting party. (NYSCEF 362, January 25, 2025 tr; NYSCEF 360, June 11, 2025 tr; NYSCF 361, June 12, 2025 tr; NYSCEF 363, August 6, 2025 tr.)

On June 30, 2017, Davidson filed a notice of individual bankruptcy. (NYSCEF 188, Notice of Bankruptcy.[8]) On September 22, 2017, plaintiff filed an adversary proceeding. (NYSCFE 331, Plaintiff's Complaint in In Re Bradley Davidson, No. 17-04048.) Plaintiff's allegations in the bankruptcy effectively mirror the allegations in this action. (*Id*.) Specifically, plaintiff sought a determination that any debt owed to plaintiff by Davidson was non-dischargeable under 11 U.S.C. § 523(a): Count I for a debt obtained by alleged misrepresentations or fraud under § 523(a)(2); Count II for a debt for fraud or defalcation while acting as a fiduciary under § 523(a)(4); and Count III for a debt for willful and malicious injury under § 523(a)(6). (*Id*.)

[8] The parties stipulated that the Court would take judicial notice of the bankruptcy court hearing transcripts and decisions. (NYSCEF 362, Jan. 25, 2025, tr 69:15-72:17.)

On September 12, 2022, the Bankruptcy Court rejected plaintiff's claims because he had not established by a preponderance of the evidence that the alleged debts owed by Davidson were obtained by fraud and misrepresentations under 11 USC § 523(a)(2). (NYSCEF 333, Bankruptcy Decision.) Specifically, the Bankruptcy Court found:

1. "White did not meet his burden to demonstrate that Davidson intended to injure him, convert his funds, fraudulently induce him, or defraud him." (*Id*. at 22.)
2. White also "did not meet his burden to demonstrate that he actually relied or justifiably relied on any representations." (*Id*.)
3. There was no evidence supporting the argument that Davidson "agreed to hold the funds to be used in any specific way or represented that they would not be used for working capital." (*Id*. at 18.)
4. There was no evidence that Davidson ever "represented that the funds advanced by Burch would be held in trust or used exclusively to fund a specific budget." (*Id* at 20.)
5. Of the $500,000 at issue, $400,000 had been provided by Burch to ThinkSay before White executed the recording agreement. (*Id*. at 14, 21, 23.)
6. Burch had "released White and will not seek to collect the $500,000 note." (*Id*. at 16, 22.)

The US District Court for the District of Massachusetts affirmed the Bankruptcy Court's decision. (NYSCEF 334, Feb. 14, 2023, Decision.) There was no appeal to the First Circuit Court of Appeals.

The inquest began on January 25, 2025 (NYSCEF 362) and continued June 11 (NYSCEF 360) and 12, 2025 (NYSCEF 361) and August 6, 2025 (NYSCEF 363.) Because TSM is in default and this is an inquest on damages, the only issue before the court is whether plaintiff established that he was damaged by TSM's fraudulent inducement and if so, how much. (*Woodson v Mendon Leasing Corp*., 100 NY2d 62, 71 [2003] [citations omitted] [(a defaulting party is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them."]; *NMR e-Tailing LLC v Oak Inv. Partners*, 216 AD3d 572, 573 [1st Dep't 2023]

[finding defendant admitted causation and liability on a default judgment on fraudulent inducement]; *Christian v Hashmet Mgt. Corp*., 189 AD2d 597, 598 [1st Dep't 1993] ["by defaulting, a defendant admits all traversable allegations contained in the complaint, and thus concedes liability, although not damages."]); *Brightside Home Improvements, Inc. v Northeast Home Improvement Servs*., 208 AD3d 446, 450 [2d Dep't 2022] [a defaulted party cannot raise "substantive arguments against their liability, which are not properly addressed at an inquest on damage."]) The court declines TSM's invitation to revisit liability.

Generally, for fraud, "a plaintiff may recover only the actual pecuniary loss sustained as a direct result of the wrong." (*Cont. Cas. Co. v PricewaterhouseCoopers, LLP*, 15 NY3d 264, 271 [2010].) Under this rule, the actual loss sustained as a direct result of fraud that induces an investment is the "difference between the value of the bargain which a plaintiff was induced by fraud to make and the amount or value of the consideration exacted as the price of the bargain." The damages are to compensate plaintiffs for what they lost because of the fraud, not for what they might have gained. (*Id*.) "[L[lost opportunity [damages] . . [are] not a recoverable out-of-pocket loss." (*Connaughton v Chipotle Mexican Grill, Inc.,* 29 NY3d 137, 143 [2017].)

Plaintiff seeks the return of the $500,000 that Burch paid to the TSM on plaintiff's behalf plus prejudgment interest. On a fraudulent inducement claim, "[t]he true measure of damage is indemnity for the actual pecuniary loss sustained as the direct result of the wrong or what is known as the 'out-of pocket' rule.'" (*Lama Holding Co. v Smith Barney Inc*., 88 NY2d 413, 421 [1996] [internal citations and quotations omitted].) Damages are generally "computed by ascertaining the difference between the value of

the bargain which a plaintiff was induced by fraud to make and the amount or value of the consideration exacted as the price of the bargain." (*Id*. 421.) Plaintiff can also recover pre-judgment interest on the sums delivered because the "defendant had the advantage of using the money that plaintiff was fraudulently induced to contribute, and plaintiff was deprived of his use thereof." (*Whittemore v Yeo*, 117 AD3d 544 [1st Dept 2014]) at 545-546.) On an inquest for a default judgment for fraudulent inducement, it is deemed admitted by the default that "the entire investment, and the loss thereof, was a result of the established fraudulent scheme." (*NMR e-Tailing LLC*, 216 AD3d at 573.)

The court finds that plaintiff has not established any damages. First, Burch, not plaintiff, paid TSM on plaintiff's behalf and Burch released plaintiff from his obligation to repay Burch pursuant to the note. Plaintiff insists that he did not release his fraud claim and the court agrees. However, the court rejects plaintiff's reliance on the word "notwithstanding" because plaintiff's argument goes to liability. There is no dispute that liability for fraudulent inducement has been established on default. (*Woodson*, 100 NY2d at 71.) However, the import of the release is that plaintiff owes nothing to Burch. (*See also* NYSCEF 333, Bankruptcy Decision at 16, 22.) The word "notwithstanding" does not eviscerate the release and cannot create damages where there are none. The release is clear on its face; there is no ambiguity. Plaintiff's understanding of the perfectly clear release is not relevant. The court also rejects plaintiff's assertion that Burch assigned his claim against TSM, if any, to plaintiff. There is absolutely no such language in the release and no other evidence has been offered to the court; plaintiff never even testified that Burch assigned his claim to plaintiff.

Calling the damages "lost opportunity damages" does not save plaintiff. First, such damages are not recoverable on a fraud claim. (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137 [2017].) Second, defendants' reliance on *Manas v VMS Assoc., LLC*, 53 AD3d 451, 454 (1st Dep't 2008] for the proposition that lost opportunity damages are available for fraudulent inducement is a misreading of an ordinary contract case. It involved long and short-term compensation plans where the court dismissed the fraud claim finding that plaintiff had failed to allege fraud damages separate from the contract damages and plaintiff's allegations that defendant entered the contract while planning not to perform it were not sufficient. (*Id*.) Even if such damages were available, plaintiff failed to offer any expert testimony as to how a legitimate record company would have used the funds more effectively to promote plaintiff's song Love. Under this theory, plaintiff would have paid the $500,000 to another promoter; Burch would still be out the $500,000. To the extent plaintiff claims he would have received royalties as a result of legitimate promotion, no such evidence was offered, and plaintiff's lost profits are speculative. (See *Vice Inc. v Stapp*, 63 Misc 3d 1236(A) [Sup Ct 2019] ["Stapp's assertions that his reputation and songwriting (1) *could* have been devoted to his solo career rather than to benefit the Art of Anarchy Band, and (2) *would* have generated his own album and a related tour in 2017 and 2018, are inadequate to satisfy his pleading burden. These are not claims for actual out-of-pocket loss. Rather, they are "completely undeterminable and speculative" allegations of (1) potential damages to Stapp's solo career in the form of, *inter alia*, lost income, (2) loss of a contractual bargain, and/or (3) loss of profits from his purported $ 2 million investment in AOA.])

Second, the court is bound by the findings of the Bankruptcy court which apply to TSM. Res judicata, "bars future actions between the same parties on the same cause of action" once a valid judgment has been entered. (*Simmons v Trans Express*, 37 NY3d 107, 111 [2021] [internal quotations omitted].) Res judicata applies to all claims arising out of the same transaction that has already been litigated "between the same parties or those in privity with them." (*Shanghai Pearls & Gems, Inc. v Paul*, 239 AD3d 31, 36 [1st Dept 2025].) "Parties in privity are those whose "mutuality of interests" are so aligned that a suit against one is essentially a suit against the other. ..[and] "are closely related in time, space, motivation, or origin" such that the claims "arise out of the same transaction, and res judicata should apply" (*Id*.) Since Davidson founded, owned, and managed TSM, and the action or inaction that plaintiff challenges was Davidson acting for TSM, the "mutuality of interests" factor is established.

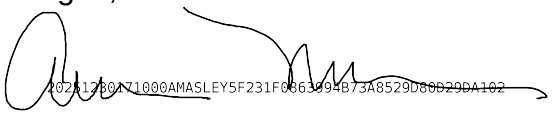
Plaintiff is also barred by collateral estoppel or issue preclusion.

> "[I]ssue preclusion can be raised by one who was not a party or in privity in the first suit. Only the party against whom the doctrine is invoked must be bound by the prior proceeding. Thus, issue preclusion applies: (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) the issue was necessary to support a valid and final judgment on the merits." (*Rojas v Romanoff*, 186 AD3d 103, 108-09 [1st Dept 2020].)

Plaintiff litigated the same issues in the bankruptcy court and lost. The Bankruptcy Court decision is a final adjudication of fraudulent inducement and damages: (1) the $500,000 note had been fully released, and (2) Davidson did not defraud plaintiff . (NYSCEF 333, Bankr. Dec. at 18, 22.) These findings were affirmed by the District of Massachusetts, see In Re Davidson, No. 17-04048, ECF No. 286 (Bankr. D. Mass. Feb. 14, 2023), and White declined to further appeal. Re-litigation of these same issues is precluded.

This decision is made as a matter of law. To the extent it is based on testimony, the court finds that both parties were prone to exaggeration and had credibility issues. For example, Davidson's denial of any knowledge of think Say Records was absurd. (NYSCEF 361, Davidson tr 119:7-9; 32:13-20.) Davidson holds himself out as an expert in the recording industry having worked with many prominent artists, teaches several music business classes at University of Massachusetts and formerly at NYU, but he does not know the difference between profit and revenue. (NYSCEF 363, tr 32:16-33:13, 33:49:12-50:11.) Plaintiff's testimony regarding Citi National Bank's action asserting a fraudulent transfer claim against him undermined plaintiff's credibility. The ownership of plaintiff's home was transferred to Avalon Realty Company (Avalon), but plaintiff testified that it existed, it never existed and/or it was dissolved yet he opened a bank account for Avalon. (NYSCEF 360, June 11, 2025, tr 48:8-49:19, 50:19-51:14; 53:16-54:3, 55:21, 55:10-56:12.) Such testimony and plaintiff's purported confusion was not credible. Finally, plaintiff's testimony that he never visited the radio station WPLJ to promote the song Love was contradicted by emails concerning his visit to WPLJ with TSM's Pearson. (NYSCEF 361, June 12, 2025, tr 75:7-76:11; VEC 1-60, D28, Feb. 19, 2025 email "WPLJ scheduling"; VEC 1-57, D22, email "First Radio Visit, WPLJ!" 2/17/2015; VEC 1-58, D23, email WPLJ Feb. 17, 2015.)

Accordingly, plaintiff failed to establish damages, and the case is dismissed.



DATE: 12/30/2025 **ANDREA MASLEY, JSC**

Check One: [x] **Case Disposed** [ ] **Non-Final Disposition**

Check if Appropriate: [ ] **Other (Specify _____)**