

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

DAMON DASH

Plaintiff,

-against-

Index No: 157989/2014

Assigned to Hon. Eileen Bransten

LEE DANIELS, LEE DANIELS ENTERTAINMENT LTD.,
SIMONE SHEFFIELD, CANYON ENTERTAINMENT

Defendants.

**MEMORANDUM OF LAW IN OPPOSITION OF THE MOTION
OF DEFENDANTS' LEE DANIELS AND LEE DANIELS
ENTERTAINMENT FOR A MORE DEFINITIVE STATEMENT**

Dated: January 12, 2015
New York, NY

BHUSHAN LAW GROUP, P.C.

By: /s/ Natraj S. Bhushan, Esq.
Natraj S. Bhushan, Esquire.

By: /s/ Eric Howard, Esq.
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Plaintiff, Damon Dash ("Damon" or "Plaintiff"), respectfully submits this memorandum of law in opposition to defendants' Lee Daniels ("Lee") and Lee Daniels Entertainment Ltd.'s ("Lee Daniels Entertainment", and collectively with Lee, "Defendants") motion for a more definitive statement pursuant to New York Civil Practice Law and Rules ("CPLR") §3024 (a) ("Motion"). For all the reasons set forth herein, Defendants motion should be denied, and they should be directed to serve an Answer to the Complaint.

Preliminary Statement

Under New York law, through his complaint ("Complaint"), Plaintiff alleges the following claims for damages: (i) breach of contract, (ii) breach of the implied covenant of good faith and fair dealing, (iii) promissory estoppel, (iv) unjust enrichment, (v) conversion, (vi) tortious interference with a business relationship, and (vii) defamation. Despite being properly pled and clearly stated in his Complaint, Defendants now move for a more definitive statement as to the first, second, third, fourth, and fifth claims.¹

In short, Defendants arguments can be summed up as follows: (1) Plaintiff fails to identify which of the alleged contracts were being breached as well as how said contracts were breached; (2) Plaintiff lacks standing to sue on at least one of the contracts that he claims was breached (i.e., the Woodsman Agreement); (3) Plaintiff fails to allege how a guarantee made *before* the execution of two of the three agreements could survive the terms of the contract; (4) Plaintiff fails to allege facts which would overcome the contract's choice of Wilmington, Delaware as the venue for "any action on a claim arising" from the contract; and, (5) without additional clarification, Plaintiff's claim is time barred. *See*, Motion at p. 1.

¹ Plaintiff's sixth claim and seventh claim are the subject of a separate motion to dismiss so neither of those claims will be discussed in the instant Memorandum of Law.

For all the reasons set forth herein, these arguments must fail because Plaintiff's Complaint is clearly answerable in that he has properly alleged his first five claims for damages and said Complaint adequately notifies the Defendants of the specific claims made against them.

Argument

I. THE ALLEGATIONS IN THE COMPLAINT ARE CLEAR, INTELLIGIBLE, AND ANSWERABLE

CPLR §3024 (a) provides that "[i]f a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a response he may move for a more definite statement." As mentioned above and as drafted, Plaintiff's Complaint is sufficient to apprise the Defendants of the Plaintiff's claims and to enable them to serve a responsive pleading.

Specifically, the Complaint contains "plain and concise statements" (as required under CPLR § 3014). The Complaint is also "sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of" the cause of action (as required under CPLR § 3013). In short, a cursory review of all of the Defendants aforementioned arguments can be easily answered by a quick review of Plaintiff's Complaint, which is a glaring omission from the exhibits to Defendants' Motion. Nevertheless, Plaintiff will address each of Defendants arguments in turn.

First, the Plaintiff clearly alleges a statement of facts, numbers each allegation, and carefully articulates which claims are against which Defendants. *See generally*, Complaint ("Comp"), which is attached as Exhibit # 1 to the Affirmation of Natraj S. Bhushan ("Bhushan Aff."). Moreover, each claim contains well-pleaded facts and all the necessary elements required to be plead under New York law. *See generally*, Comp.

Second, the Plaintiff clearly alleges that there were three agreements (i.e., the Woodsman

Agreement, the Shadowboxer Agreement, and the McConnell Agreement) that the parties (i.e., Plaintiff and Lee and/or Lee Daniels Entertainment) entered into as well as the specific terms of each agreement that were breached. *See*, Comp ¶¶ 11-53; *Id.* at ¶¶ 78-87. To the extent that Defendants are now arguing that Plaintiff lacks standing as to the Woodsman Agreement because Dash Films, Inc. is the proper party to that agreement (Defendants have only offered documentary evidence as to this agreement), Plaintiff avers that as the controlling shareholder of Dash Films, Inc. he does have standing to pursue this litigation on behalf of the currently dissolved Dash Films, Inc. As Chief Judge Cooke stated while writing on behalf of the Court of Appeals for the State of New York, 'this analysis is confirmed by section 1006 of the Business Corporation Law, which provides that "The dissolution of a corporation shall not affect any remedy available to * * * [its] shareholders for any right or claim existing * * * before such dissolution' (Business Corporation Law, § 1006, subd [b]). Under this statute, the rights and remedies of the shareholders existing prior to dissolution are viewed as if the dissolution never occurred." *See, Independent Investor Protective League et al., v. Time, Inc.*, 50 N.Y.2d 259 (1980).

Third, while it is undisputed that the Woodsman Agreement contains an integration clause (validity of which is a question of law), Plaintiff clearly alleges that Lee guaranteed the Plaintiff return of principal plus his share of additional interest owed *after* entering into that agreement pursuant to the terms of the McConnell Agreement, which was, and still is, an entirely different agreement by and between Lee, Lee Daniels Entertainment, and Plaintiff. *Id.* at ¶¶ 48-49.

Fourth, as and for Defendants forum/jurisdiction clause argument (validity of which is a question of law) as to the Woodsman Agreement, Plaintiff's allegations underlying the quasi contract and conversion claims cannot be narrowly interpreted at this stage of the litigation to be

deemed "controversy or dispute arising out of this agreement." See, Operating Agreement for the Woodsman, LLC, § 14.10, attached as Exhibit # 1 to the Affirmation of James Sammataro in support of Motion.

Lastly, Defendants' statute of limitations argument is beyond the scope and plain language of motion for a more definitive statement. *Assuming arguendo*, Plaintiff avers that he has alleged that Defendants have (1) clearly acknowledged the debts owed to him and (2) offered partial payment, both of which restarts the statute of limitations under New York law. *Id.* at ¶¶ 65-72.

Based on the foregoing, Defendant's Motion is a blatant attempt at forcing Plaintiff to engage in pre-answer discovery, which is palpably improper, and "when the nature and basis of a party's pleading are sufficiently definite and clear to permit response, the motion is not available; a bill of particulars or disclosure should be used to ascertain any of the minutiae still missing." 3 Weinstein-Korn-Miller, N. Y. Civ. Prac. § 3024.08.

Conclusion

Based upon the foregoing, the affirmation of Natraj S. Bhushan in additional support of this opposition Memorandum of Law, and the allegations set forth in his pleadings, Plaintiff respectfully requests that the Court deny Defendants' motion in their entirety, and direct Defendants to timely serve Plaintiff with an Answer to the Complaint.

Dated: New York, New York
January 12, 2015

Respectfully submitted,

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