

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Noah Scheinmann,

Plaintiff,

v.

Leonard Dykstra,

Defendant.

Civil Action No. _____

COMPLAINT

[DEMAND FOR JURY TRIAL]

Plaintiff, Noah Scheinmann, by and through his attorneys, Polsinelli PC, for and by his Complaint against Defendant Leonard Dykstra alleges as follows:

PRELIMINARY STATEMENT

Defendant Leonard Dykstra (“Defendant” or “Dykstra”), entered into a work-for-hire agreement and certain revenue sharing agreements with Plaintiff, Noah Scheinmann (“Plaintiff” or “Scheinmann”), in a successful effort to induce Scheinmann to manage Defendant’s social media presence, to serve as the ghost writer for his Twitter account, to serve as a media and business consultant, and in other capacities. Scheinmann worked assiduously for Dykstra—masterminding and ghostwriting his Twitter presence, putting in 18-hour days while taking calls and answering text messages from Dykstra at all hours, coordinating various of Dykstra’s business efforts, advising Dykstra with respect to media and business opportunities, and dealing with the fallout from Dykstra’s boorish behavior. Once Dykstra reaped the tremendous benefits of Scheinmann’s efforts, he attempted to secure all of the rewards for himself by purporting to unilaterally terminate the agreements and by refusing to pay Scheinmann the amounts owed to him. This Complaint seeks to make Dykstra honor his agreements with Scheinmann and pay to Scheinmann that which is due to him.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Noah Scheinmann, is a United States citizen domiciled in New York. He resides in New York , New York.

2. Upon information and belief, Defendant Leonard Dykstra is a United States citizen domiciled in California, and is believed to reside in Murrieta, California.

3. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1332(a) (diversity) because Plaintiff and Defendant are citizens of different States and the amount in controversy exceeds the sum or value of \$75,000..

4. Venue is proper in this judicial district because it is where a substantial part of the events or omissions giving rise to Scheinmann’s claims occurred. *See* 28 U.S.C. § 1391(b).

5. This Court may exercise personal jurisdiction over Dykstra because he transacted business within the State—specifically with Scheinmann—and this action arises out of that business. Scheinmann and Dykstra entered into various agreements, the terms of which are more fully set forth below (the “Agreements”). The Agreements were entered into in New York and contemplate Scheinmann’s performance thereunder in New York.

GENERAL ALLEGATIONS

6. On or about Wednesday May 11, 2016, Scheinmann and Dykstra executed a written agreement denominated the “Payment Agreement,” a true and correct copy of which is attached hereto as **Exhibit “A.”**

7. Dykstra’s goal in entering into the Payment Agreement with Scheinmann was to obtain Scheinmann’s expertise in steering a media campaign to encourage sales of Dykstra’s book, “House of Nails: A Memoir of Life on the Edge” (“House of Nails”), to oversee all media

and business opportunities connected to the release of House of Nails, and to attract other business opportunities for Dykstra.

8. On or about May 24, 2016, Scheinmann and Dykstra either verbally modified the Payment Agreement or entered into a new agreement by agreeing to share fifty percent of the proceeds that Dykstra would receive from an appearance to be promoted by Live Nation Worldwide, Inc. (the "Appearance Agreement"). The Appearance Agreement is evidenced by its memorialization in an agreement denominated "Performance Agreement" between Dykstra and Live Nation Worldwide, Inc. ("Live Nation"). A true and correct copy of the Performance Agreement is attached hereto as **Exhibit "B."**

9. Pursuant to the Payment Agreement, Scheinmann ghost wrote and/or orchestrated all of the tweets issued from Dykstra's Twitter account (except for the first tweet) from May 10, 2016, the date of the inception of Dykstra's Twitter account, to June 4, 2016, the date that Dykstra unilaterally terminated the payment agreement.

10. In addition, Scheinmann utilized Dykstra's Twitter account to successfully reach out to individuals who could bring media exposure to Dykstra.

11. Scheinmann's ghost writing of Dykstra's Twitter account garnered tremendous media attention for Dykstra including, but not limited to, stories referencing his Twitter account being featured in the New York Post, Yahoo! Sports, Bleacher Report, the New York Daily News, nj.com, and phillyvoice.com. In addition, Scheinmann's ghost writing efforts either directly resulted in or contributed to Dykstra being offered live appearances on various media outlets including, but not limited to, The Herd on FS1, ESPN's Mike and Mike and First Take, Vice Media, The Doug Gottlieb Show, the Adam Carolla podcast, and an appearance on the Howard Stern Show.

12. Scheinmann's ghost writing of Dykstra's Twitter account led to many economic opportunities for Dykstra.

13. In addition to the ghost writing of Dykstra's Twitter account, Scheinmann also conceived and created video content for Dykstra, assisted Dykstra in preparing for media appearances, fielded various media and business opportunities, strategized with Dykstra concerning new business opportunities, and acted as a liaison with Dykstra's publishers, business contacts, and various representatives.

14. Scheinmann served as Dykstra's consultant, producer, creative director, writer, editor, videographer, photo editor, advisor, media director, booking agent, ghost writer, and publicist. Scheinmann routinely worked 18-hour days on behalf of Dykstra including fielding and making texts and telephone calls well after midnight.

15. In recognition of the critical role played by Scheinmann in the positive and immediate attention and publicity garnered by Scheinmann's efforts on behalf of Dykstra, Dykstra agreed to further modify the Payment Agreement or to enter into a new agreement whereby Scheinmann would receive an interest equal to Dykstra's in the proceeds from any business ventures that originated with Dykstra's Twitter account.

16. Dykstra acknowledged Scheinmann's role in his success on several occasions by expressing to third parties his appreciation for and confidence in Scheinmann's efforts. For instance, on May 21, 2016, Dykstra wrote an e-mail to Danielle Bartlett at HarperCollins in which he gushed:

Danielle, I would like to introduce you to Noah. Peter has met Noah. He is my close friend who put this deal together with Live Nation. *He has been the driving force behind building my brand and promoting the book via Twitter. It's also important you know that Noah is the only person I trust in this capacity*, as he is not only triple-smart, he knows the sports media business cold . . . (emphasis added).

17. Three days later, on May 24, 2016, Dykstra wrote another e-mail to Ms. Bartlett, proclaiming:

Lastly, it's important you understand that everything isn't always as it appears. For example, the reason I am receiving media requests everyday [sic], and my book is being bought in pre-sales, are all a direct result of what Noah Scheinmann (my friend that is the mastermind behind my success on Twitter) is doing everyday [sic] in the world of Twitter. He and I have been friends for almost 10 years, and he is triple-smart. Noah and I talk numerous times a day, and everything we do is for a reason. As I said, this is all a direct result of Noah understanding Twitter as good, or better than anybody and then taking that knowledge and executing on a daily basis.

18. Once Dykstra obtained the benefits of Scheinmann's efforts, he apparently decided that he would keep all of the profits from those ventures for himself. He purported to unilaterally terminate the Agreements with Scheinmann and disavowed any further obligations to Scheinmann.

19. Pursuant to the terms of the Payment Agreement, Scheinmann was entitled to payment of, among other amounts, \$15,000 for services thereunder, an amount that remains unpaid. The Payment Agreement also entitles Scheinmann to payment based upon the number of copies of House of Nails that are sold.

COUNT I – BREACH OF CONTRACT

20. Scheinmann hereby incorporates by reference allegations in paragraphs 1-19.

21. Scheinmann and Dykstra entered into a valid and binding contract—specifically, the Payment Agreement.

22. Scheinmann performed any and all conditions precedent and obligations for which he is seeking payment under the Payment Agreement.

23. Dykstra is indebted to Scheinmann for services rendered under the Payment Agreement, in the amount of \$15,000.

24. Although Scheinmann has demanded payment, Dykstra has failed and refused to pay.

25. Scheinmann has been damaged by Dykstra's non-payment.

COUNT II – QUANTUM MERUIT

26. Scheinmann hereby incorporates by reference allegations in paragraphs 1-25. Before entering into the Payment Agreement, and at the request of Dykstra, Scheinmann in good faith provided Dykstra, without attribution, with content for House of Nails.

27. In addition, during and before the pendency of the Payment Agreement and at the special insistence and request of Dykstra, Scheinmann in good faith provided certain other services to Dykstra, as explained above.

28. Dykstra accepted those services freely.

29. Scheinmann reasonably expected to receive compensation from Dykstra for those services.

30. The reasonable value of those services is \$76,000.

31. Although Scheinmann has demanded payment, Dykstra has failed and refused to pay such sum and the amount remains unpaid.

32. Scheinmann has been damaged by Dykstra's non-payment.

COUNT III – UNJUST ENRICHMENT

33. Scheinmann hereby incorporates by reference herein the allegations in the above paragraphs.

34. Before entering into the Payment Agreement, and at the request of Dykstra (and to his benefit), Scheinmann, at his own expense, provided Dykstra, without attribution, with content for House of Nails.

35. In addition, during and before the pendency of the Payment Agreement and at the special insistence and request of Dykstra (and to his benefit), Scheinmann, as his own expense, provided certain other services to Dykstra, as explained above.

36. Under these circumstances, equity and good conscience demand that Dykstra give restitution for his receipt of the benefits that Scheinmann conferred, in the amount of the reasonable value of the services.

37. The reasonable value of those services is \$76,000.

38. Although Scheinmann has demanded payment, Dykstra has failed and refused to pay such sum and the amount remains unpaid.

39. Scheinmann has been damaged by Dykstra's non-payment.

COUNT IV – DECLARATORY JUDGMENT (28 U.S.C. § 2201)

40. Scheinmann hereby incorporates by reference herein the allegations in the above paragraphs.

41. There presently exists between Scheinmann and Dykstra an actual and justiciable controversy with respect to Scheinmann's interest in various business enterprises and opportunities, including (but not limited to) the amount that Dykstra will owe to Scheinmann based upon sales of House of Nails.

42. Scheinmann presently has no adequate remedy at law.

43. Amounts that will become due and payable to Scheinmann are not yet liquidated.

44. Although Scheinmann has demanded that Dykstra acknowledge his obligations to Scheinmann, Dykstra has refused to do so.

PRAYER FOR RELIEF

Wherefore, Plaintiff Noah Scheinmann hereby demands judgment in his favor and against Defendant Leonard Dykstra as follows:

- A. For compensatory damages in the amount of \$15,000 for Dykstra's breach of contract;
- B. For compensatory damages in the amount of \$76,000 for *quantum meruit* or unjust enrichment;
- C. For an order declaring that Plaintiff is entitled to:
 - i. payment of 50% of the proceeds of any ventures about which Defendant first learned, or to whom Defendant was first introduced through his Twitter feed; and
 - ii. payment of a bonus under the terms of the Payment Agreement based upon the number of copies of House of Nails that are sold.
- D. An award of Plaintiff's costs and reasonable attorney's fees; and
- E. For such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Noah Scheinmann hereby demands a trial by jury on all issues so triable of right.

Dated: July 8, 2016

Respectfully submitted,

Polsinelli PC

/s/ Adam K. Grant _____

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