

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

FEB 11 2009


CLERK

ROZONE PRODUCTIONS, LLC;)
RTR ILLUMINATED INVESTORS 3, LLC;)
and ROBERT T. ROSEN,)

Plaintiffs,)

vs.)

ANDREW ROCKY RACZKOWSKI;)
TICKETS PLUS INCORPORATED,)
d/b/a STAR TICKETS PLUS;)
GOOD MUSIC AGENCY, INC.,)
d/b/a TALENT BUYERS NETWORK;)
BRIAN KNAFF; and ROBERT J. STRUYK,)

Defendants.)

CIV. 09-5019

COMPLAINT

PARTIES

1. Plaintiff Rozone Productions, LLC, is a Texas limited liability company with its principal place of business located in Austin, Texas.
2. Plaintiff RTR Illuminated Investors 3, LLC, is a Texas limited liability company with its principal place of business located in Houston, Texas.
3. Plaintiff Robert T. Rosen ("Rosen") is an individual who is a citizen of Texas.
4. Defendant Andrew Rocky Raczkowski ("Raczkowski") is an individual who is a citizen of Michigan. He may be served at 620 Century Avenue SW, Suite 300, Grand Rapids, Michigan 49503-4905.
5. Defendant Tickets Plus Incorporated, d/b/a Star Tickets Plus, ("Star Tickets") is a Michigan corporation with its principal place of business located in Grand Rapids, Michigan. It

may be served through its registered agent, Andrew Rocky Raczkowski, at 620 Century Avenue SW, Suite 300, Grand Rapids, Michigan 49503-4905.

6. Defendant Brian Knaff (“Knaff”) is an individual who is a citizen of Nevada. He may be served at 700 South 9th Street, Las Vegas, Nevada 89101.

7. Defendant Good Music Agency, Inc., d/b/a Talent Buyers Network, (“Good Music Agency”) is a Montana corporation doing business as a foreign corporation in Nevada. Knaff is the president of Good Music Agency and is also its registered agent in Nevada. Good Music Agency may be served at 700 South 9th Street, Las Vegas, Nevada 89101.

8. Defendant Robert J. Struyk (“Struyk”) is an individual who is a citizen of Michigan. He may be served at 4682 Meadowlake Drive SE, Grand Rapids, Michigan 49512.

JURISDICTION

9. The district courts of the United States have original jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that there is complete diversity of citizenship between the Plaintiffs and the Defendants and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

GENERAL ALLEGATIONS

10. This lawsuit concerns breach of contract, fraud, theft, and other causes of action committed by Defendants. The Plaintiffs sustained millions of dollars in damages as a result of the Defendants conduct.

11. Rozzone Productions, LLC, and RTR Illuminated Investors 3, LLC, entered into a joint venture agreement. The joint venturers (referred to as “Rozzone”) promoted musical concerts on August 4, 5 and 6, 2008, at the Sturgis Motorcycle Rally in South Dakota (the “Concerts”). The Concerts featured the popular musicians KISS, John Fogerty, and Kenny

Chesney, and these three musical groups were hired by Rozone to perform at the Concerts. A fourth well known entertainer, Larry the Cable Guy, was also under contract to perform.

12. Pursuant to a written contract, Good Music Agency and Knaff were hired by Rozone to line up the musicians for the Concerts. Good Music Agency and Knaff, in turn, recommended to Rozone that Rozone use Star Tickets to sell the tickets for the Concerts. In this regard, Good Music Agency and Knaff represented to Rozone that he had worked with Star Tickets on other musical concerts and that Star Tickets was a sound ticket vendor. Rozone relied on this representation by Good Music agency and Knaff (as it would turn out) to its extreme and substantial detriment.

13. Following the recommendation from Good Music Agency and Knaff, Rozone had a number of telephone conversations and internet contacts with the Chief Executive Officer of Star Tickets, Andrew Rocky Raczkowski, and on May 1, 2008, Rozone and Star Tickets entered into a written contract for Star Tickets to sell the tickets to the Concerts for Rozone.

14. The attendance at the Concerts was enormous. Representatives of the Sturgis Motorcycle Rally commented that the crowd for the Kenny Chesney concert *alone* was the largest concert crowd ever at the Sturgis Motorcycle Rally (and the Sturgis Motorcycle Rally was in its 68th year). An expert from the School of Engineering at North Carolina State University (who has been retained by the Plaintiffs) has viewed various photographs taken of the Concerts and has opined that the crowd for the Kenny Chesney concert alone exceeded 42,000 persons.

15. Despite the enormous crowds, Raczkowski and Star Tickets fraudulently reported to Rozone that ticket sales *for all three concerts combined* (i.e., KISS, John Fogerty and Kenny Chesney) was roughly 25,000 persons.

16. The simplest way to determine the number of persons who actually attended the Concerts would be to take a count of the number of ticket stubs collected at the gates of the Concerts. For this reason, it is customary in the industry for the concert promoter (here, Rozone) to take immediate possession of the boxes containing the ticket-stubs so that an accurate count can be made if a question should arise concerning the attendance figures (as the ticket-stub count can then be compared to the number reported to the concert promoter by the company selling the tickets). After the Concerts, however, Raczkowski (and therefore Star Tickets acting through its agent) made it a point to take immediate possession of the ticket boxes himself. In this regard, Raczkowski had to destroy (and did destroy) ticket stubs from the ticket boxes so that the number of ticket sales reported by Raczkowski and Star Tickets to Rozone would jibe with the number of ticket stubs in the ticket boxes. Rozone has now begun an analysis of the ticket stubs and has discovered that Raczkowski (and therefore Star Tickets), in his haste to fraudulently cover up the number of tickets actually sold by him and by Star Tickets, ended up destroying more ticket stubs than the number of ticket sales reported to Rozone by Raczkowski and Star Tickets.

17. Raczkowski made incriminating statements about his involvement in the ticket accounting practices and or fraud to persons at the airport in South Dakota and on three other occasions.

18. Struyk acted as a consultant and agent for Rozone in promoting the concerts. It is believed that Struyk had full knowledge of prior problems with Star Tickets accounting and ticket sales practices, but failed to inform Rozone of the same although he had a duty to do so under the circumstances.

19. Rozone has also discovered that Raczkowski and Star Tickets fraudulently and in breach of contract paid to Knaff (and Knaff fraudulently and in breach of contract accepted from

Raczkowski and Star Tickets) \$2 for every ticket sold by Raczkowski and Star Tickets and Raczkowski and Star Tickets covered up this \$2 per ticket given to Knaff in a vague total of "fees and expenses" that were reported to Rozone. Rozone never gave Raczkowski and Star Tickets the authority to pay this \$2 per ticket to Knaff and Rozone never gave Knaff the authority to accept this \$2 per ticket sold.

20. In addition, Rozone has discovered that Good Music Agency and Knaff caused, Larry the Cable Guy, who was under contract with Rozone, to refuse to perform at the campground causing damages to Rozone.

21. Rozone was required to pay all three musical groups (i.e., KISS, John Fogerty, and Kenny Chesney) for their performances at the Concerts regardless of the number of tickets that were sold for the Concerts. As a result of the breach of contract, fraudulent acts, and theft committed by the Defendants as alleged in this Complaint, the Plaintiffs have lost millions of dollars, and Rosen individually was required to advance roughly \$1,000,000 to Rozone during the Concerts because of the fraudulent acts and the theft that was committed by the Defendants. In addition to their actual and consequential damages, the Plaintiffs are entitled to punitive or exemplary damages against the Defendants based on the fraudulent acts and the theft committed by the Defendants.

22. In addition to negligence, fraud, and theft, Star Tickets, Good Music Agency, and Knaff have breached the contracts that each had with Rozone, and this has resulted in damage to Rozone, which includes Rozone's attorneys' fees and costs for prosecuting this lawsuit. In addition to fraud and theft, the Defendants are liable to the Plaintiffs for conversion and the Defendants also engaged in a conspiracy to commit wrongful acts against the Plaintiffs.

23. The Plaintiffs also request that the Court order a full accounting of all records and all supporting materials that are related to all of the ticket sales for the Concerts as well as order a

full accounting of all of the funds that have been misappropriated as well as other pertinent financial information that is related to the application and use of these misappropriated funds.

24. The Plaintiffs are also entitled to prejudgment and post-judgment interest at the maximum legal rate for all of the above claims against the Defendants and are also entitled to their Court costs.

CAUSES OF ACTION AGAINST STAR TICKETS

25. Plaintiff realleges and restates paragraphs 1 through 24 above.

Count One—Breach of Contract Against Star Tickets

26. Star Tickets is in breach of contract through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Two—Intentional Misrepresentation

27. Star Ticket engaged in intentional misrepresentation through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Three—Deceit

28. Star Tickets engaged in deceit through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Four—Civil Conspiracy

29. Star Tickets engaged with two or more persons with the intended purposes of accomplishing one or more of the foregoing counts, had a meeting of the minds on the object or course of action to be taken, which then took place resulting in damages to plaintiffs as the proximate result of the conspiracy.

CAUSES OF ACTION AGAINST RACZKOWSKI

30. Plaintiff realleges and restates paragraphs 1 through 29 above.

Count One--Breach of Contract against Raczkowski

31. Raczkowski is in breach of contract through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Two—Intentional Misrepresentation

32. Raczkowski engaged in intentional misrepresentation through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Three—Deceit

33. Raczkowski engaged in deceit through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Four—Civil Conspiracy

34. Raczkowski engaged with two or more persons with the intended purposes of accomplishing one or more of the foregoing counts, had a meeting of the minds on the object or course of action to be taken, which then took place resulting in damages to plaintiffs as the proximate result of the conspiracy.

CAUSES OF ACTION AGAINST GOOD MUSIC AGENCY AND KNAFF

35. Plaintiff realleges and restates paragraphs 1 through 34 above.

Count One—Breach of Contract against Good Music Agency and Knaff

36. Good Music Agency and Knaff is in breach of contract through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Two—Intentional Misrepresentation

37. Good Music Agency and Knaff engaged in intentional misrepresentation through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Three—Deceit

38. Good Music Agency and Knaff engaged in deceit through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Four—Breach of Fiduciary Duty

39. Good Music Agency and Knaff breached the fiduciary duty to plaintiffs through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Five—Tortious Interference with a Valid Business Relationship or Expectancy

40. Good Music Agency and Knaff engaged in tortious interference with a valid business relationship or expectancy by the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Six—Civil Conspiracy

41. Good Music Agency and Knaff engaged with two or more persons with the intended purposes of accomplishing one or more of the foregoing counts, had a meeting of the minds on the object or course of action to be taken, which then took place resulting in damages to plaintiffs as the proximate result of the conspiracy.

CAUSES OF ACTION AGAINST STRUYK

42. Plaintiff realleges and restates paragraphs 1 through 41 above.

Count One—Intentional Misrepresentation

43. Struyk engaged in intentional misrepresentation through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Two—Deceit

44. Struyk engaged in deceit through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Three—Breach of Fiduciary Duty

45. Struyk breached his fiduciary duty to plaintiffs through the foregoing conduct and other conduct causing damage to the plaintiffs in an amount to be determined by a jury.

Count Four—Civil Conspiracy

46. Struyk engaged with two or more persons with the intended purposes of accomplishing one or more of the foregoing counts, had a meeting of the minds on the object or course of action to be taken, which then took place resulting in damages to plaintiffs as the proximate result of the conspiracy.

DAMAGES

47. Plaintiff realleges and restates paragraphs 1 through 46 above.

48. The full amount of the Plaintiffs' damages has not been calculated at this time and this Complaint will be supplemented. The past economic damage to joint venturer RTR Illuminated Investors 3, LLC, alone which has resulted from the fraud, theft and other wrongful conduct of the Defendants is, at the very minimum, \$4,300,000. In addition to this amount, Rosen individually was required to withdraw \$841,447 from his Individual Retirement Account in order to fund Rozone for the Concerts (as a result of the fraud, theft and other wrongful acts of the Defendants), and, in addition, Rosen was required to pay penalties as a result of this funding from his IRA. Furthermore, Rosen sustained losses due to these sales from his IRA that Rosen would not have made had it not been for the wrongful acts of the Defendants. Because Rozone had sustained such severe financial losses due to the fraud, theft and other wrongful acts of the Defendants, Rosen was required to fund an escrow account in the amount of \$125,000 for a prepayment obligation for an upcoming concert in New Orleans that Rozone is promoting. Rozone would have funded this prepayment but for the severe losses that it sustained as a result of the Defendants' wrongful conduct. Rozone now has roughly \$400,000 invested in this

upcoming New Orleans concert, and because of the fraud and theft committed by the Defendants, Rozone was not able to invest funds that is should have had from the Concerts into the upcoming New Orleans concert which has placed the New Orleans concert in serious jeopardy. In addition, Rozone was required to borrow \$302,000 from Gary Lippold (who is the owner of the venue were the Concerts were held) due to the fraud, theft, and other wrongful acts of the Defendants. Rozone was also required to borrow other amounts from other individuals due to the wrongful acts of the Defendants. Rozone is now on the verge of collapse due to the fraud, theft, and other wrongful acts of the Defendants. This is simply a partial listing of the losses sustained by the Plaintiffs, and the complete damages have not been calculated at this time and this Complaint will be supplemented.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for and demand judgment against the Defendants, jointly and severally, for their actual and consequential damages, an accounting of all ticket sales from the Concerts (as well as the application and use of the funds received from the tickets sales), attorneys' fees, punitive or exemplary damages, prejudgment and post-judgment interest at the maximum legal rate, their Court costs and such other relief to which the Plaintiffs may show themselves justly entitled to receive.

PLAINTIFFS DEMAND A JURY TRIAL AS TO ALL OF THE ISSUES IN THIS CASE.

Dated this 11th day of February 2009.

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