

ORIGINAL

Index No.:

Year: 2007

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

PETER C. LEEDS,

Index No. \_\_\_\_\_ / 2007

Plaintiff,

**SUMMONS**

-against-


Summons and Complaint  
Filed on December \_\_, 2007

DEBORAH HARRY, CHRISTOPHER STEIN,  
JAMES MOLLIKA, CLEMENT BOZEWSKI,  
and HMI MUSIC NORTH AMERICA,

Defendants.

SUMMONS AND COMPLAINT

Pursuant to 22 NYCRR 130-1.1-a

  
Phillip R. Schatz, Esq.

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By: *[Signature]*

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

07603978

PETER C. LEEDS,

Index No. \_\_\_\_\_ / 2007

Plaintiff,

SUMMONS

-against-

Summons and Complaint  
Filed on December \_\_, 2007

DEBORAH HARRY, CHRISTOPHER STEIN,  
JAMES MOLLICA, CLEMENT BOZEWSKI,  
and EMI MUSIC NORTH AMERICA,

Defendants.

To: Deborah Harry, Chris Stein, James Mollica, and Clement Bozewski  
c/o Martin E. Silfen PC  
545 Fifth Avenue  
New York, NY 10017

Alistair McMullen  
EMI Music North America  
150 Fifth Avenue  
New York, NY 10011

FILED  
DEC 04 2007  
NEW YORK COUNTY CLERK'S OFFICE

**YOU ARE HEREBY SUMMONED** to answer the papers in this action and to serve a copy of your answering papers on plaintiff's attorney within the time provided in complaint annexed hereto. In case of your failure to submit answering papers, summary judgment will be taken against you by default for the relief demanded in the complaint.

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

PETER C. LEEDS,

Plaintiff,

-against-

DEBORAH HARRY, CHRISTOPHER STEIN,  
JAMES MOLLIKA, CLEMENT BOZEWSKI, and  
EMI MUSIC NORTH AMERICA,

Defendants.

Index No. \_\_\_\_\_ / 2007

COMPLAINT

Plaintiff PETER C. LEEDS, as and for his complaint herein, states as follows:

Preliminary Statement

1. This is an action for breach of contract and tortious interference arising from an agreement dated May 24, 1979 Agreement (the "May 24, 1979 Agreement") between plaintiff Peter Leeds and defendants Deborah Harry, Chris Stein, James Mollika, and Clement Bozewski, members of the rock group "Blondie" (hereafter collectively referred to as "Blondie"). A true and correct copy of the May 24, 1979 Agreement is attached hereto as Exhibit A and incorporated by reference.

2. At the same time as they entered into the May 24, 1979 Agreement, Blondie "unconditionally and irrevocably" directed Chrysalis Music, Inc. ("Chrysalis"), the predecessor in interest to defendant EMI Music North America ("EMI"), to make future payments to Mr. Leeds "without any set off of any kind or nature." A true and correct

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copy of Blondie's May 24, 1979 direction to Chrysalis/EMI (the "May 24, 1979 Unconditional and Irrevocable Direction") is attached hereto as Exhibit B and incorporated by reference.

3. By a written guarantee dated July 18, 1979 (the "July 18, 1979 Unconditional Guarantee") Chrysalis accepted Blondie's May 24, 1979 Unconditional and Irrevocable Direction and agreed "to unconditionally pay to [Mr. Leeds] ... the amounts and percentages" set forth in the May 24, 1979 Agreement. A true and correct copy of the July 18, 1979 Unconditional Guarantee is attached hereto as Exhibit C and incorporated by reference.

4. For over 28 years, the parties have interpreted the language of these documents to require Chrysalis (and later EMI) to pay commissions to Mr. Leeds on gross earnings before the deduction of any expenses, except for the actual costs of recording which were paid in full long ago. Specifically, for over 28 years, Chrysalis (and later EMI) paid Mr. Leeds commissions on gross earnings without deducting record producer royalties charged to Blondie as the result of ongoing sales. Moreover, for over 28 years, Blondie received or had access to statements setting forth the manner of Mr. Leeds' commission calculation, and raised no objection to that calculation.

5. In or around August 2007, the Blondie defendants apparently decided that they no longer liked the contract they had entered into in 1979. Under the pretext of asserting a "mistake" of interpretation -- Blondie now asserts, ignoring the language of the agreements and the over 28 year course of performance, that record producer royalties should be deducted before calculation of Mr. Leeds' commissions -- Blondie is actually seeking to renegotiate the agreement, and to extort concessions to which it is not entitled.

The Blondie defendants are not only in breach of their own obligations to Mr. Leeds, but have also tortiously interfered with Mr. Leeds' agreement with EMI by directing EMI to withhold payments and statements and ignore the long-standing "unconditional and irrevocable" direction, and its express prohibition against any claims of set off.

6. By acquiescing to Blondie's unjustified actions, and withholding both moneys and documentation to which Mr. Leeds is entitled, EMI has independently breached its obligations to Mr. Leeds.



14. Upon information and belief, EMI acquired Chrysalis in or around 1991 and assumed Chrysalis' obligations and benefits under the the May 24, 1979 Agreement, the May 24, 1979 Unconditional and Irrevocable Direction, and the July 18, 1979 Unconditional Guarantee.

#### Facts

##### The May 24, 1979 Agreement

15. The May 24, 1979 Agreement (Exhibit A) states in pertinent part that Blondie shall pay to Mr. Leeds commissions, based upon "gross earnings" from any and all sources for any and all contracts executed prior to February 9, 1985 (Exh. A, ¶3).

16. The May 24, 1979 Agreement defines "gross earnings" to specifically exclude any "expense, cost or disbursement incurred ... or chargeable against" the members of Blondie except "monies advanced [to Blondie] or paid on [Blondie's] behalf for the actual costs of recording phonograph albums." (Exh. A, ¶4). Such actual recording costs were paid in full long ago, so there are no such expenses to be deducted from gross earnings.

17. The May 24, 1979 Agreement attaches and references a copy of Blondie's September 4, 1977 contract with Chrysalis (hereafter the "Chrysalis Contract", attached hereto as Exhibit D and incorporated by reference). (Upon information and belief, the Chrysalis Contract was renegotiated in June 1980 upon substantially similar terms).

18. The Chrysalis Contract defines "recording costs" as payments made for recording services, studio or hall rentals, tape, engineering, editing, instrument rental and cartage, mastering, transportation, accommodations, immigration clearances, and so

called 'per diems' to persons rendering services in connection with the recording of record masters (Exh. D, ¶¶3(c), 18).

19. The Chrysalis Contract expressly does not include record producer royalties as "recording costs"; on the contrary, the Chrysalis Contract expressly provides that Blondie "shall be solely responsible for and shall pay any and all royalties and other sums which may be payable to any producer of any of the Masters in respect to the recording and production thereof." (Exh. D, ¶20).

20. Thus, the Chrysalis Contract makes clear that producer royalties are (a) separate and distinguishable from the actual cost of producing records and (b) expenses that are chargeable against the members of Blondie. As set forth below, this understanding, which is also manifest in the plain language of the May 24, 1979 Agreement, has controlled performance of the May 24, 1979 Agreement for over 28 years.

The May 24, 1979 Unconditional and Irrevocable Direction to Chrysalis/EMI to Pay Mr. Leeds Without Offset

21. In the May 24, 1979 Agreement, Blondie agreed to "unconditionally and irrevocably authorize and direct Chrysalis, any record company other than Chrysalis, any music publishing company and any of their subsidiary and affiliate companies with whom any or all of us are associated to forward directly to [Leeds] as and when such statements are to be prepared and forwarded to [Blondie] . . . all income, royalty, earnings or other statements prepared for or on our behalf and to deduct and pay to [Leeds] the commission from all such gross earnings." (Exh. A, ¶13).

22. In order to induce Mr. Leeds to enter into the May 24, 1979 Agreement, the members of Blondie "unconditionally and irrevocably direct[ed] and authorize[d]"

Chrysalis to make commission payments due to Mr. Leeds "without any set off of any kind or nature, the payments required by Paragraphs 2 and 13 of the Agreement, . . . as and when such payments are due and payable in accordance with the terms and conditions of said agreement" (May 24, 1979 Unconditional and Irrevocable Direction, emphasis added, Exhibit B).

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Chrysalis' July 18, 1979 Unconditional Guarantee to Pay Mr. Leeds

23. The May 24, 1979 Agreement further obligated Blondie to provide to Mr. Leeds an "unconditional guarantee from Chrysalis to make the . . . payments" due under the Agreement (Exh. A, ¶12).

24. By letter dated July 18, 1979, Chrysalis agreed to accept the direction and authorization and "to unconditionally pay [Mr. Leeds] ... the amounts and percentages set forth in Paragraphs 2 and 13 of the Agreement as and when such payments are due and payable in accordance with the terms and conditions of [the May 24, 1979 Agreement] and to render statements to [Leeds] setting forth how the payments and percentages were determined" (July 18, 1979 Unconditional Guarantee, Exh. C hereto).

The Parties' 28 Year Record of Consistent Performance and Interpretation

25. The clear and unambiguous terms of the May 24, 1979 Agreement and attachments, the May 24, 1979 Unconditional and Irrevocable Direction, and the July 18, 1979 Unconditional Guarantee provide that Mr. Leeds' commission on record sales shall be calculated on gross sales prior to the deduction of any payments chargeable to or payable by Blondie, including record producer royalties or any other expense other than "the actual costs of recording." For over 28 years, this plain-language interpretation has controlled payments under the agreement, direction and guarantee.

26. Upon information and belief, for over 28 years, from May 24, 1979 to on or about August 2007, EMI and its predecessor in interest Chrysalis paid commissions to Mr. Leeds calculated upon gross sales, prior to deduction of any record producer royalties owed by defendants.

27. Upon information and belief, for over 28 years, from May 24, 1979 to on or about August 2007, EMI and its predecessor in interest Chrysalis rendered regular statements to defendants which disclosed payments to Mr. Leeds and the methodology by which those payments were calculated.

28. Upon information and belief, for over 28 years, from May 24, 1979 to on or about August 2007, these regular statements showed that Mr. Leeds was paid commissions on the gross sales, prior to deduction of any record producer royalties owed by defendants, and defendants or their agents received and accepted these statements as true and accurate.

29. Upon information and belief, for over 28 years, from May 24, 1979 to on or about August 2007, defendants or their agents have engaged in several litigation-related reviews of commissions to Mr. Leeds and the calculation of such commissions, and failed to raise any objection to the payment of commissions to Mr. Leeds on the gross sales, prior to deduction of any record producer royalties owed by defendants.

30. Upon information and belief, for over 28 years, from May 24, 1979 to on or about August 2007, defendants have had actual or constructive knowledge that Mr. Leeds was paid commissions on the gross sales, prior to deduction of any record producer royalties owed by defendants, and accepted and agreed to that methodology for determining Mr. Leeds' payments.

Blondie's Breach and Inducement of EMI's Breach

31. In or around October 2006, without cause or justification, defendant Deborah Harry stopped paying commissions owed by her to Mr. Leeds for royalties payable by the American Society of Composers, Authors and Publishers ("ASCAP") arising from public

performance of her compositions, and upon information and belief also directed the payment agent to refuse to provide statements or information. Defendants have never provided any justification or explanation for Harry's failure to pay ASCAP commissions or provide statements or information concerning the ASCAP royalties.

32. By letter dated August 13, 2007 (Exhibit E), defendants' attorneys wrote Alistair McMullen, Senior Vice President of Legal Affairs for EMI, and instructed EMI to withhold commissions due to Mr. Leeds, notwithstanding the "unconditional and irrevocable" direction (Exhibit B) that had been in effect for 28 years and its express prohibition against "any set off of any kind or nature."

33. Upon information and belief, defendants' attorneys orally instructed EMI to stop providing statements and information to Mr. Leeds. The asserted basis for this instruction was defendants' contention that "Blondie producer royalties should have been deducted by EMI Capitol prior to its calculation and application of Leeds' varying percentages in commissions on the royalties from the sale and exploitation of Blondie's recordings," notwithstanding that this contention flew in the face of the unambiguous language of the May 24, 1979 Agreement, the "unconditional and irrevocable" direction to EMI to make payment "without any set off of any kind or nature," and the parties' 28-year course of performance.

34. The parties' performance for the 28-plus years that the Agreement has been in effect demonstrates that defendants' new-found position concerning the deductibility of producer royalties is nothing more than an attempt to negate and renegotiate a binding and unambiguous legal agreement. The idea that defendants only now noticed a

calculation methodology which has presumably been transparent and disclosed in various statements for close to three decades is not sustainable.

Notice and Opportunity to Cure

35. By letter dated November 14, 2007 (Exhibit F), plaintiff gave defendants notice of their breach pursuant to paragraph 24(b) of the May 24, 1979 Agreement and a fifteen day opportunity to cure. As of this date, defendants have not cured their breaches.

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AS AND FOR A FIRST CAUSE OF ACTION

Breach of Contract  
[Against All Defendants]

36. The May 24, 1979 Agreement and attachments, the May 24, 1979 Unconditional and Irrevocable Direction, and the July 18, 1979 Unconditional Guarantee constitute binding and enforceable contracts between and among Mr. Leeds and defendants.

37. Defendants have breached their contractual obligations to Plaintiff by, among other things, failing to make payments under the May 24, 1979 Agreement and failing to provide information and statements under the May 24, 1979 Agreement.

38. Plaintiff has fully performed all of his obligations under the May 24, 1979 Agreement.

39. As a result of Defendants' breaches of their contractual obligations, Plaintiff has been damaged in an amount to be determined at trial.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**Tortious Interference With Contractual Relations**  
**(As Against Defendants Deborah Harry, Chris Stein,**  
**James Mollica, and Clement Bozewski)**

40. The July 18, 1979 Unconditional Guarantee is a valid and binding agreement between Plaintiff and defendant EMI, the successor in interest to Chrysalis.

41. Defendants Deborah Harry, Chris Stein, James Mollica, and Clement

Bozewski had knowledge of the July 18, 1979 Unconditional Guarantee.

42. Without economic justification, and with malice, Defendants Deborah Harry,

Chris Stein, James Mollica, and Clement Bozewski wrongfully induced defendant EMI to

breach the July 18, 1979 Unconditional Guarantee by, inter alia, instructing EMI to

withhold payments and information owed to Plaintiff.

43. As a result of Defendants' tortious interference, Plaintiff has been damaged.

Conclusion

WHEREFORE, plaintiff demands judgment against defendants as follows:

- (1) For the award of money damages in an amount to be determined;
- (2) For a declaration that Mr. Leeds' commissions are to be calculated from gross earnings prior to the deduction of any expenses, including record producer royalties;
- (3) For the costs of the action, including reasonable attorney's fees; and
- (4) For such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
December 3, 2007

WROBEL & SCHATZ LLP

By: 

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