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

ASPIRE MUSIC GROUP, LLC, Plaintiff, v. CASH MONEY RECORDS, INC., YOUNG MONEY ENTERTAINMENT, LLC, YOUNG MONEY ENTERTAINMENT, a joint venture, BRYAN "BABY" WILLIAMS, RONALD "SLIM" WILLIAMS and UMG RECORDINGS, INC., Defendants.	Index No. 652029/2017 Hon. Barry R. Ostrager Motion Sequence No. 009
YOUNG MONEY ENTERTAINMENT LLC, Counterclaimant, v. ASPIRE MUSIC GROUP, Counterclaim Defendant.	

ASPIRE MUSIC GROUP, LLC'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS MOTION TO DISMISS YOUNG MONEY ENTERTAINMENT, LLC'S COUNTERCLAIMS

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Plaintiff and Counterclaim Defendant Aspire Music Group, LLC ("Aspire") respectfully submits this reply in support of its Motion to Dismiss (the "Motion") the counterclaims asserted against it (the "Counterclaims") by Defendant and Counterclaimant Young Money Entertainment, LLC ("Young Money").

I. PRELIMINARY STATEMENT

In an action alleging breach of a written contract, there is no evidence more critical than the language of the contract itself. But here, Young Money's Opposition (the "Opposition" or "Opp.") to Aspire's Motion would have the Court look everywhere ***except*** the contract at issue. That is because the underlying premise of Young Money's Counterclaims—that Aspire breached a contractual obligation to pay Young Money one-third of the profits from exploitation of Aubrey "Drake" Graham's music in Canada—is not supported by the contract Young Money alleges Aspire has breached (the "Aspire/YME Agreement"), or, for that matter, any of the other agreements referenced in Young Money's Counterclaims. This absence of any contract provision granting Young Money the right to receive revenues from the Canadian distribution of Drake's music is fatal to all of Young Money's Counterclaims.

As a "hail Mary" play at saving its Counterclaims, Young Money nevertheless cobbles together several pieces of extrinsic evidence in an attempt to conjure such a contractual provision out of thin air. But the purported evidence cited in Young Money's Opposition is precluded by the merger clause in the Aspire/YME Agreement, and in any event it is utterly unpersuasive on its face. Young Money's focus on certain legal opinions contained in an affidavit submitted in a separate action by non-lawyer and non-party Jas Prince is particularly desperate; as set forth below, Prince's statements in an action in which he was ***adverse*** to Aspire about a contract to which he was ***not a party*** cannot amount to party admissions and have no probative value as a

matter of law. Nor does any of the other purported evidence cited by Young Money make up for the absence of any actual contractual duty.

Finally, even if Young Money had evidence to sustain the Counterclaims, they would be partially time-barred, and Young Money could not avail itself of the benefits of CPLR 203(d) to toll the statute of limitations on these Counterclaims because it failed—without any justification—to bring the Counterclaims in response to Aspire's initial complaint. Moreover, Young Money's Counterclaims do not arise from the same transactions or occurrences as Aspire's claims. For all of these reasons, as set forth in more detail below, Aspire respectfully requests that the Court grant its motion to dismiss Young Money's Counterclaims.

II. ARGUMENT

A. Young Money's Attempts to Fabricate a Payment Term That Does Not Exist in Any of the Contracts It Is Suing Under Fail.

"[T]he best evidence of the parties' intent is what they say in their writing." *Modern Art Servs., LLC v. Fin. Guar. Ins. Co.*, 161 A.D.3d 618, 618 (1st Dep't 2018) (quotation omitted) (affirming dismissal of breach of contract claim). Here, the written agreements at issue conclusively bar Young Money's Counterclaims. Not one of the agreements referenced in the Counterclaims—the Memorandum of Agreement ("MOA"), the Aspire/YME Agreement, or the Universal Canada Agreement—contains any provision entitling Young Money to any amount of the profits from the exploitation of Drake's music in Canada, much less one-third of the profits, as alleged. Young Money does not point to any contract provision in its Opposition. Instead, Young Money argues that none of these agreements "***preclude*** the Counterclaims." Opp. at 10 (emphasis added). This position is, of course, absurd. The issue is not whether the parties reached an agreement precluding the Counterclaims, but rather, whether the ***fully integrated agreements*** at issue provide any support for Young Money's Counterclaims. They do not and

therefore Young Money cannot state a claim.[1] *See, e.g.*, *Quintas v. Pace Univ.*, 23 A.D.3d 246, 247 (1st Dep't 2005) (affirming dismissal of breach of contract claim where "[p]laintiff did not identify any contractual provision" obligating defendant to perform obligation alleged in complaint); *Barrett v. Grenda*, 154 A.D.3d 1275, 1277–78 (4th Dep't 2017) (dismissing breach of contract claims because "Plaintiff was required to set forth in that cause of action . . . the provisions of the contract upon which the claim was based," but "failed to identify the particular contractual provision that was breached.")

Young Money and Aspire agreed in the MOA "that they shall enter into a distribution agreement with Universal Canada for the distribution of Artist's recordings in Canada." Affirmation of Alexandra E. Siegel in Support of Motion ("Siegel Aff."), Ex. A at ¶ 15. This is precisely what these parties did by entering into the Universal Canada Agreement, which Young Money specifically approved, fully aware that that agreement only provides for payments to Aspire, subject only to Aspire's promise to direct one-third of the proceeds payable to it under the Universal Canada Agreement ***to Universal Motown Republic Group on Cash Money's behalf***. *See* Siegel Aff., Ex. C at Schedule "B" (inducement letter in which Young Money "confirm[ed] that it has received and read the Agreement and approve[d] of the terms of the Agreement and voluntarily consent[ed] to its execution and delivery by [Aspire] to Universal."). As established on the face of the parties' agreements, therefore, the only payment obligation Aspire had in connection with Canadian distribution of Drake's recordings was to "Universal Motown Republic Group on Cash Money's behalf."

[1] These flaws are equally fatal to Young Money's causes of action for declaratory relief and an accounting, which are grounded entirely in the allegations underlying Young Money's breach of contract claim, and thus rise and fall with that claim.

Young Money also reaffirmed its consent to the terms of the Universal Canada Agreement by executing the Aspire/YME Agreement, which explicitly referenced the Universal Canada Agreement and contained no terms reflecting Young Money's purported right to a share of the profits therefrom, let alone the one-third interest that Young Money has pled in the Counterclaims.[2] *See* Siegel Aff., Ex. B at ¶ 8.07(a). The only reference to any payments that might hypothetically be directed to Young Money is a passing reference to "monies otherwise payable to Young Money and [Aspire]." But that passing reference simply covers a potential future scenario where Young Money might receive payments[3]—it clearly does not create an obligation on the part of Aspire to pay Young Money, as it contends, a one-third interest in the proceeds from the Universal Canada Agreement. Nor can such an interpretation be squared with the Aspire/YME Agreement's explicit reference to the then-existing Universal Canada Agreement, which does not provide that ***any*** monies are payable to Young Money.

With no language in the contract supporting its claim, Young Money resorts to arguing that Drake's recordings are "works for hire" for the benefit of the joint venture between Young Money and Cash Money, and that because Aspire retained only a one-third interest in the copyright to Drake's music, "the allocation of ownership to Aspire in the Drake recordings carries with it the right to only one-third of the profits received from the exploitation of those recordings, including in Canada." Opp. at 3. But notwithstanding the default rules set forth under copyright law—which is not the law governing this pure breach of contract action—the

[2] Thus, Young Money's contention that "Aspire is barred from exploiting those works independently without express written approval" (Opp. at 7) is irrelevant. There can be no debate that both Cash Money and Young Money expressly approved Aspire's exploitation of Drake's music in Canada in the MOA, the Aspire/YME Agreement, and, in Young Money's case, the inducement letter to the Universal Canada Agreement.

[3] In the inducement letter Young Money signed with regard to the Universal Canada Agreement, Young Money agreed "to be added as a direct party to the Agreement as if Young Money had been an original signatory thereto jointly and severally with [Aspire]" if Aspire is dissolved or in default. Siegel Aff., Ex. A at Schedule "B."

agreements at issue unambiguously establish that Young Money agreed to a payment structure under which Aspire received two-thirds of the profits from Canadian distribution.[4]

The unambiguous language of the contracts at issue establishes that Young Money expressly agreed to permit Aspire to unilaterally license the Canadian distribution rights to Universal Canada, and that Aspire's only payment obligation relating to that distribution was to pay "Universal Motown Republic Group on Cash Money's behalf." Aspire therefore requests that the Court grant its motion to dismiss Young Money's claims in their entirety.

B. Young Money's Extrinsic Evidence Should be Disregarded and Does Not Support the Counterclaims Regardless.

"[W]here an agreement contains . . . a merger clause, extrinsic evidence that adds to or varies its terms should [be] precluded[.]" *N.Y.C. Health & Hosps. Corp. v. St. Barnabas Hosp.*, 10 A.D.3d 489, 490-91 (1st Dep't 2004); *see also In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 725 F. Supp. 712, 728 (S.D.N.Y. 1989) ("When contracts contain integration clauses as they do here, extrinsic evidence may not be admitted to prove different or additional terms in the contract, although it may be admitted to interpret ambiguous terms of an integrated contract."). The Aspire/YME Agreement includes such a merger clause. *See* Siegel Aff., Ex. B at ¶ 16.03 ("This agreement contains the entire understanding of the parties relating to its subject matter and supersedes all prior or contemporaneous written or oral agreements, representations, understandings and/or discussions between the parties relating thereto. No change of this agreement will be binding unless signed by the party to be charged."). Nevertheless, Young

[4] Even if copyright law applied to the breach of contract claims brought by Young Money—which it does not—a copyright owner may by contract waive its rights. *See* 1 Nimmer on Copyright § 6.12 (2018) ("[N]o accounting is available between joint authors who have explicitly waived that remedy."). Notwithstanding such right as Young Money may have otherwise had as copyright owner, the agreements at issue conclusively show that Young Money agreed to Aspire's receiving two-thirds of the profits from Canadian distribution.

Money submits various pieces of extrinsic evidence in an attempt to invent a nonexistent payment term entitling Young Money to one-third of the Canada profits.

For example, Young Money contends that certain legal opinions in an affidavit submitted in another action by Jas Prince—a layperson and nonparty to the Aspire/YME Agreement—"alone warrants denial of [Aspire's] Motion." Opp. at 1. This evidence, however, should clearly be disregarded in light of the Aspire/YME Agreement's integration clause. Moreover, even if extrinsic evidence were proper or necessary (which it is not), a person who is not a party to a clear, unambiguous, and integrated contract cannot speak to the parties' intent and his statement is therefore completely irrelevant to interpreting the contract's terms. *See Chun Hye Kang-Kim v. Feldman*, 121 A.D.2d 590, 591 (2nd Dep't 1986) ("[A]n alleged subsequent oral statement by . . . a nonparty to the contract . . . is irrelevant in view of the contract's integration clause and its clear and unambiguous language."); *2138747 Ontario, Inc. v. Samsung C & T Corp.*, 31 N.Y.3d 372, 377 (2018) (stating that it is a "fundamental, neutral precept of contract interpretation ... that agreements are construed in accord with ***the parties***' intent," the best evidence of which is "what [the parties] say in their writing") (emphasis added). Further, the Prince affidavit was filed in connection with an action in which he was ***adverse to Aspire***. *See* Affirmation of Howard E. King in Opposition to Motion ("King Aff."), Ex. 1 at ¶ 1. The notion that anything in the Prince affidavit could be deemed an admission of Aspire is therefore utterly absurd. [5]

[5] Nor does Jas Prince's father James Prince's agreement to fund this lawsuit for Aspire magically transform the Prince affidavit into an Aspire admission, despite Young Money's best attempts to waive its hands and make it so. Moreover, that the Prince affidavit was proffered by one of the law firms representing Aspire in this litigation is doubly irrelevant, as Profeta & Eisenstein was also not a party to the underlying agreements and did not negotiate the underlying agreements on behalf of Aspire. Even if the Prince affidavit could be considered a statement by Profeta & Eisenstein—which it cannot—a statement by an attorney who was not representing Aspire in another case cannot be deemed an admission by Aspire. *See, e.g.*, *Bellino v. Bellino Const. Co.*, 75 A.D.2d 630, 630 (2nd Dep't 1980) ("Admissions by counsel . . . are admissible against a party provided that the statements had been made by the attorney ***while acting in his authorized capacity***.") (emphasis added).

Young Money's other evidence, even if it could properly be considered, is equally unavailing. Indeed, Young Money's contention that a nonparty's discovery ***request*** in a different litigation somehow bears upon the meaning of the contracts at issue here is ridiculous. *See* Opp. at 13-14. Nor is the testimony of Ronald Sweeney—Young Money's ***own attorney***, who has a documented history of interfering in this litigation to benefit Young Money at Aspire's detriment, and who potentially stands to gain if Young Money prevails in this litigation (*see* King Aff., Ex. 4 at 10:18-11:21)—at all probative. *See* Opp. at 14. And finally, Young Money's focus on the January 11, 2017 Complaint filed by Aspire against Cash Money is misplaced. *See id.* That complaint alleged that Cash Money failed to pay Aspire the one-third share of profits that was due to Aspire from exploitation of Drake's music in the territory of the Aspire/YME Agreement, defined as "the Universe ***excluding Canada***." *See* Siegel Aff., Ex. B at ¶ 14.44. That Aspire did not make "any distinction regarding exploitation being a higher share [sic] to Aspire for Drake recordings in Canada" (Opp. at 14) is beside the point, because Aspire's profit share with regard to Canada was irrelevant to the claims in that proceeding.

C. Young Money's Counterclaims are Also Partially Barred by the Statute of Limitations.

Even if Young Money's Counterclaims had any merit—which they do not—Young Money's attempt to evade the partial bar on its Counterclaims imposed by the statute of limitations is fruitless, for several reasons. First, Young Money filed its initial answer to Aspire's initial complaint on June 27, 2017, at which time it failed to assert the Counterclaims and therefore failed to secure itself of the benefits of CPLR 203(d). "[A]lthough the tolling provision of subsection 203(d) clearly applies to counterclaims asserted in a defendant's initial answer to the original complaint, courts have typically not considered it to be applicable to counterclaims asserted in subsequent pleadings filed by a defendant – i.e., either in an ***answer to***

an amended complaint or in an amended answer to the original complaint." *Rosenfeld v. City of New York*, No. 06CV1979ERKVVP, 2009 WL 10701874, at *3 (E.D.N.Y. Jan. 11, 2009) (emphasis added); *see also Am. Stock Exch., LLC v. Mopex, Inc.*, 230 F. Supp. 2d 333, 336 (S.D.N.Y. 2002) ("Mopex could have asserted its trade secret claims pursuant to Section 203(d) on September 14, 2000, at the time of its original answer and counterclaim, even if those claims were otherwise time-barred. . . . When it chose not to do so, it gave up the claim-saving benefits of Section 203(d)."), *citing Coleman, Grasso & Zasada Appraisals Inc. v. Coleman*, 246 A.D.2d 893, 894 (1998) (counterclaim asserted in amended answer was not timely because CPLR 203(d) "applies to counterclaims but does not mention amended pleadings"). Because Young Money could have asserted the Counterclaims at the time it first answered Aspire's initial complaint, it cannot belatedly invoke CPLR 203(d) now.

Even if CPLR 203(d) did apply, Young Money would ***still*** be unable to avail itself of the offset provision of that statute because its Counterclaims do not arise from the same transactions or occurrences as Aspire's claims. Young Money nevertheless attempts to support its invocation of CPLR 203(d)'s offset provision with the wholly conclusory declaration that "[t]here can be no honest argument that the claims regarding Canada profits did not . . . 'arise from the same transactions, occurrences, or series of transactions or occurrences'" as Aspire's claims. Opp. at 18, *quoting* CPLR 203(d). But a review of *SCM Corp. v. Fisher Park Lane Co.*, 40 N.Y.2d 788 (1976) reveals this unsubstantiated statement to be false. There, a tenant brought claims seeking a refund for overpayment of rent, "predicated on acts of the landlord related to, or by which it computed and assessed, escalations of rent after the term of the lease[.]" *Id.* at 791. The landlord brought a "defense" seeking reformation of the lease, "grounded on allegations as to the intention of the contracting parties prior to and at the time the lease was executed with respect to

the proportionate share of electrical expense to be borne by the tenant." *Id.* at 790, 791-92. The Court of Appeals concluded that these actions did not arise from the same transactions or occurrences as required under CPLR 203(d), because while "[t]he tenant's claim relates to performance under the contract[,] the landlord's relates to the negotiation and articulation of the agreement made between the parties prior to its execution." *Id.* at 792. "While in a most general sense both might be said to be associated with the lease, in the language of [former] CPLR 203 (subd. (c)[6]), the claims do not arise out of the same transactions or occurrences." *Id.*

Here, Young Money's position is rebutted by the language of the Aspire/YME Agreement, which ***expressly*** excludes from its purview Canadian distribution and references the Universal Canada Agreement without including any terms relating to Young Money's and Aspire's purported division of profits from the Universal Canada Agreement.[7] *See* Siegel Aff., Ex. B at ¶ 1.01 (furnishing Drake's recording services to the YME Joint Venture "in the Territory"), ¶ 14.44 (defining "Territory" as "the Universe excluding Canada"). Furthermore, as in the *SCM Corp.* case, while Aspire's claims arise out of Young Money's and Cash Money's performance (or, more particularly, lack thereof) under the Aspire/YME Agreement, Young Money's claims relate to the intention of the parties prior to the execution of the Aspire/YME Agreement with respect to the sharing of profits for Canadian distribution.[8] Under the precedent

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[6] At the time, subdivision (c) of CPLR 203, like present-day CPLR 203(d), "exclude[d] from the bar of limitations, but only to the extent of plaintiff's claim, counterclaims even if they would have been barred at the time of the commencement of the action, provided that the counterclaim be one that 'arose from the transactions, occurrences, or series of transactions or occurrences, upon which a claim asserted in the complaint depends.'" *SCM Corp.*, 40 N.Y.2d at 791.

[7] Young Money's assertion that there is "no language in the [Aspire/YME] Agreement that grants to Aspire two-thirds of the net profits or proceeds from distribution of Drake albums in Canada" (Counterclaims at ¶ 13) is thus far beyond the point, as the Aspire/YME Agreement on its face does not and was not intended to apply to the split of revenues from such Canadian distribution.

[8] As Young Money admits, the Universal Canada Agreement was executed before the Aspire/YME Agreement. *See* Opp. at 8, fn.7.

established by the Court of Appeals, Young Money's Counterclaims therefore plainly do not arise out of the same transactions or occurrences as Aspire's claims.

Because Young Money failed to timely interpose its Counterclaims in response to Aspire's initial complaint, and because the Counterclaims do not relate to the same transactions or occurrences underlying Aspire's claims, Young Money's Counterclaims are at minimum time-barred to the extent they accrued before August 17, 2012—six years before the filing of the Counterclaims—regardless of whether they seek affirmative relief or set-off against Aspire's recovery.

III. CONCLUSION

For the reasons set forth above, Aspire requests that Young Money's Counterclaims be dismissed in their entirety and with prejudice.

Dated: December 6, 2018
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