

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**MAURICE SIMMONDS P/K/A “VERSE”
D/B/A VERSE AND SHAM MUSIC
PUBLISHING,**

Plaintiff,

vs.

**BU VISION, LLC; KONVICT
ENTERTAINMENT, LLC; BU MUSIC
PUBLISHING, LLC; AND ABOU THIAM,**

Defendants.

CIVIL ACTION NO:

2018CV303786

COMPLAINT

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff **Maurice Simmonds p/k/a “Verse” d/b/a Verse and Sham Publishing** (referred to as the “**Plaintiff**”), by and through his undersigned attorney, James L. Walker, Jr., and hereby files this First Amended Complaint against the Defendants above, and pleads as follows:

PARTIES

1. Plaintiff Maurice “Verse” Simmonds d/b/a Verse and Sham Music Publishing (hereinafter “Plaintiff” or “Mr. Simmonds”) is a resident of Georgia.
2. Defendant Bu Vision, LLC (hereinafter “Bu”), is a Georgia limited liability company with a registered agent in Fulton County, and can be served through its Registered Agent, Steve Weizenecker at 3475 Piedmont Road, Suite 1700, Atlanta, GA 30305.
3. Defendant, Konvict Entertainment, LLC (hereinafter “Konvict”) is a Georgia limited liability company with a registered agent in Fulton County, and can be served through its Registered Agent, at 2000 Riveredge Parkway, Suite 885, Atlanta, GA 30328.

4. Defendant Bu Music Publishing, LLC (hereinafter “Bu Music”) is an administratively dissolved Georgia limited liability company with a registered agent in Fulton County, and can be served through its last known registered agent of record, Todd Wright, at 3475 Piedmont Road, Ste. 1700, Atlanta, GA 30305.
5. Abou Thiam is a resident of Fulton County, Georgia, having an address of 903 Noble Creek Drive NW, Atlanta, GA 30327.

JURISDICTION AND VENUE

6. The Court has jurisdiction as this Court has unlimited jurisdiction over all legal and equitable matters.
7. Venue is proper as Defendants, whether individually or through their registered agents, are located within Fulton County, State of Georgia.

FACTUAL SUMMARY

7. Plaintiff Mr. Simmonds is a performer and songwriter, who owns his own independent publishing company Verse and Sham Music Publishing.
8. On or about May 16, 2011, Mr. Simmonds entered individually into a co-publishing agreement with Bu (doing business as Konvict Entertainment, LLC) (the “Agreement”).
9. Pursuant to section 10 of the Agreement, Mr. Simmonds agreed to assign to Bu an undivided fifty percent (50%) of his publishing rights of certain Compositions.¹
10. Pursuant to section 8 of the Agreement, Defendants promised to pay Mr. Simmonds the following royalties in the Compositions assigned: i) fifty percent (50%) of Net Income² from

¹ “Compositions” is defined under section 3 of the Agreement as “each musical composition, to the full extent of [Mr. Simmonds’] ownership, control or administration interest therein in each musical composition written, owned, acquired or controlled by [Mr. Simmonds] during the Term; and two (2) Compositions, written, owned or controlled by [Mr. Simmonds] prior to the Term entitled “Who Gonna Stop Me” and “Legendary”.

² “Net Income” is defined under section 8(e) of the Agreement as “Gross Income, less any amounts Publisher [Bu] is permitted to deduct from such Gross Income pursuant to the terms of this Agreement, including, without limitation, the administration fee, any amounts paid to partial owners of Compositions or other publishers, if any, the actual cost incurred in connection with the registration of copyrights, actual costs of translating and arranging the Compositions, out-of-pocket

public performance royalties; ii) seventy-five percent (75%) of Net Income for mechanical royalties (but seventy percent (70%) of Net Income in mechanical royalties for cover songs); iii) seventy percent (70%) of Net Income for synchronization royalties (but increased to seventy-five percent (75%) once the advance has been recouped); and iv) seventy percent (70%) of Net Income from the exploitation of the Compositions by other means (i.e. print income).

11. Pursuant to an Exhibit A attached to the Agreement, Mr. Simmonds signed a Notice of Assignment of Publishing and Administration Rights that directed all correspondence, inquiries, royalty statements and payments to Bu Music.
12. Pursuant to several terms of the Agreement, several references are made to “semi-annual statements” that Defendants were to provide Mr. Simmonds.
13. According to Section 8 of the Agreement, the semi-annual statements Defendants were to provide were to be used as sales performance benchmarks to determine when the initial advance given to Mr. Simmonds would be fully recouped; when Mr. Simmonds would receive an increased percentage in his synchronization royalties; and as a sales performance benchmark to determine how much Mr. Simmonds would receive additional advances in the event Defendants exercised any of the option periods in the Agreement, pursuant to Section 7 of the Agreement.
14. Mr. Simmonds produced the number of Compositions required under the Agreement for Defendants.
15. To date, however, Defendants have not provided any royalties to Mr. Simmonds.
16. Defendants have failed to comply with regular accounting statements reflecting royalties earned for the Compositions.
17. Defendants have not only been collecting royalties without paying Mr. Simmonds his pro-rata share, but have wrongfully assigned and licensed both Mr. Simmonds’ publishing and administration rights to Universal Music Publishing Group without his consent or authorization.

fees or costs connected with the preparation and distribution of lead sheets of the Compositions, actual costs of collecting income with respect to the Compositions (or, if Publisher [Bu] collects income directly instead of via a collection society or other third party, an equivalent amount not to exceed the percentage of income then charged by the applicable collection society at the time such deduction is made); out-of-pocket fees paid to or charged by a trustee or collecting agent for the licensing of the Compositions, all out-of-pocket expenses (including reasonable legal fees and expenses) incurred by Publisher in connection with any claim or suit brought by or against Publisher concerning the Compositions, and demo costs requested or approved by [Mr. Simmonds].

18. Defendants have also failed to make any reasonable efforts to provide copies to Plaintiff of any agreements or assignments Defendants have executed with third parties regarding the Compositions.
19. Despite demand (via demand letters, phone calls, etc.), Defendants have failed and continue to refuse to provide Plaintiff with any accurate accountings reflecting the amount of revenues derived from the distribution and exploitation of Plaintiff's Compositions in order to ascertain his shares of revenues.
20. Defendants continue to collect and retain money that must be paid to Plaintiff under the Agreement for exploitation of the Compositions, including for royalties.
21. As a proximate result of Defendants' conduct, Plaintiff has potentially lost millions of dollars. And, as a proximate result of Defendants' conduct, Plaintiff has suffered severe damage to his career as a songwriter.

CLAIMS FOR RELIEF

COUNT I

BREACH OF CONTRACT

21. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 20 of the Complaint as if fully set forth herein.
22. The elements of a breach of contract claim in Georgia are 1) a valid contract; 2) plaintiff's performance as specified in the contract; 3) defendant(s)' failure to perform according to the contract; and 4) as a proximate result, plaintiff's economic loss as a result of defendant's breach of the contract.
23. The Agreement is a valid contract.
24. Mr. Simmonds fully performed all obligations required by him under the Agreement.
25. To date, Defendants have surreptitiously circumvented paying Plaintiff his respective revenue shares and failed to give any proper accounting of royalties derived from the Compositions.
26. Defendants have breached Section 8 of the Agreement in their continuous failure to pay Plaintiff all net sums actually earned and received by Defendants from the distribution and exploitation of the Compositions in a timely manner.
27. Defendants have additionally breached the Agreement by assigning and licensing the Compositions to third parties without the prior consent and authorization of Plaintiff.
28. The foregoing breaches are material.

29. As a direct and proximate result of the foregoing material breaches of the Agreement, Plaintiff has suffered loss of income due to him from royalties, publishing, distribution and merchandising. **WHEREFORE**, Plaintiff demands judgment against Defendants for compensatory, consequential and punitive damages and for other relief which he may be entitled.

COUNT II
BREACH OF FIDUCIARY DUTY

30. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 29 of the Complaint as if fully set forth herein.
31. Under Georgia law, the elements of a breach of fiduciary duty are: 1) the existence of a fiduciary duty; 2) breach of that duty; and 3) damages proximately caused by the breach.
32. Defendants, due to their positions as publishers, acted as Plaintiff's fiduciaries during the term of the Agreement. Defendants utilized their positions of trust and confidence to obtain the rights to proceed on behalf of Mr. Simmonds, to control and exploit the Compositions, and to be responsible as the only vehicle of information pertaining to Mr. Simmonds' royalties. Further, the Defendants, jointly and severally, accepted the responsibility to act in the best interest of Plaintiff.
33. Mr. Simmonds is informed and believes Defendants' actions have benefitted Defendants at the expense of the Plaintiff and thereupon alleges that the Defendants breached their fiduciary duties to him.
34. Plaintiff is informed and believes, and thereupon alleges that the Defendants concealed or suppressed material facts that Defendants, as Mr. Simmonds' fiduciaries, were ethically and legally required to disclose as herein above alleged.
35. Mr. Simmonds is informed and believes, and thereupon alleges, that Defendants, in breaching their fiduciary duty, acted willfully, maliciously, and with a conscious and reckless disregard for the rights of Mr. Simmonds.
36. As a direct and proximate result of Defendants' willful and intentionally tortious conduct, Mr. Simmonds has suffered loss of income due to him from royalties, publishing, distribution and merchandising. **WHEREFORE**, Plaintiff demands judgment against Defendants for

compensatory, consequential and punitive damages and for other relief which he may be entitled.

COUNT III

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

37. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 36 of the Complaint as if fully set forth herein.
38. Under common law in Georgia, implied in every contract is a duty for the parties to exercise in good faith and honest judgment in carrying out their rights and obligations under the contract, and to not act arbitrarily or capriciously.
39. The implied covenant of good faith and fair dealing requires Defendants to honor the terms of the Agreement by exploiting the Compositions as specified under the terms of the Agreement.
40. The implied covenant of good faith and fair dealing also requires Defendants to provide transparent, proper accounting and payments of Mr. Simmonds' royalties.
41. Defendants have breached the duty of good faith and fair dealing in their successful, secretive attempts to withhold any proper accounting of royalties and payments to Plaintiffs for royalties earned for years.
42. As a direct and proximate result of Defendants' breach of the duty of good faith and fair dealing, Plaintiff has lost income owed from royalties. **WHEREFORE**, Plaintiff demands judgment against Defendants for compensatory, consequential and punitive damages and other relief he may be entitled to.

COUNT IV

FRAUD AND DECEIT

43. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 42 of the Complaint as if fully set forth herein.
44. The elements of fraud and deceit in Georgia are 1) representation made by the defendant(s); 2) the time defendants knew they were false or had equivalent of knowledge; 3) that defendant made the representations with intention and purpose of deceiving plaintiff ; 4) justifiable reliance by the plaintiff; and 5) plaintiff sustained alleged loss and damage as a proximate result of the representations made to the plaintiff.

45. Defendants made representations that they would account and pay Plaintiff royalties pursuant to the Agreement in exchange for partial ownership rights in the Compositions and the right to exploit the Compositions under the terms of the Agreement.
46. Defendants has had a history of not paying a songwriter timely and knew that they would not provide detailed accounting or payments to Plaintiff at the time the representations were made.
47. Defendants' misrepresentations and omissions were made with the intent that Plaintiff Mr. Simmonds rely upon them to assign a portion of his rights in the Compositions.
48. Mr. Simmonds justifiably relied on the representations of Defendants and would not have entrusted Defendants with his intellectual property, career, and livelihood but for the promises and representations Defendants made acting as a co-publisher and label under the Agreement.
49. Mr. Simmonds is informed, and believes, and thereon alleges, that the Defendants' actions were for the specific purpose of depriving Plaintiff of his earned royalties and intellectual property, and to defraud Plaintiffs, with malice, pursuant to O.C.G.A. §51-6-1.
50. These acts were malicious, fraudulent, oppressive and the proximate result of damages suffered by the Plaintiff. **WHEREFORE**, Plaintiff demands judgment against Defendants for compensatory, consequential and punitive damages and other relief he may be entitled to.

COUNT V

NEGLIGENT MISREPRESENTATION

51. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 50 of the Complaint as if fully set forth herein.
52. Under Georgia law, the tort of negligent misrepresentation consists of the following elements:
 - 1) the defendant's negligent supply of false information to foreseeable persons; known or unknown; 2) such person's reasonable reliance upon that false information; and 3) such person's economic injury as a proximate result from such reliance.
53. Defendants willfully misrepresented their promise to pay royalties and render accounting statements, knowing that they were not going to provide any accounting statements or payments of Plaintiff's share of royalties.
54. Defendants made such misrepresentations to the Plaintiff to induce Mr. Simmonds to sign the Agreement.
55. Pursuant to O.C.G.A. §51-6-2, the misrepresentations made by Defendants were material to the Plaintiff.

56. As a direct and proximate result of the foregoing misrepresentations, Plaintiff has suffered damages, justifying an award of compensatory and punitive damages for such tortious conduct. **WHEREFORE**, Plaintiff demands judgment against Defendants for compensatory, consequential and punitive damages and other relief he may be entitled to.

COUNT VI
CONVERSION

57. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 56 of the Complaint as if fully set forth herein.
58. For a claim of conversion, plaintiff must show: 1) title in the plaintiff to the disputed property; 2) defendant's actual possession; 3) plaintiff's demand for return of the property; 4) defendant's refusal to return the property; and 5) value of the property.
59. Per the Agreement, Mr. Simmonds has an ownership interest in the Compositions and has substantial ownership interests in the royalties derived therefrom.
60. Defendants have actual possession of the royalties derived from exploitation of the Compositions.
61. For several years, Mr. Simmonds has demanded copies of receipts, royalty payments, and Defendants' relinquishment of the rights that were assumed.
62. Defendants refuse to relinquish the rights to the Compositions and pay royalties to Plaintiff.
63. Defendants have acted recklessly with the intent of exploiting Plaintiff, in violation of O.C.G.A. §16-8-4.
64. Defendants are therefore liable for compensatory and punitive damages for converting Plaintiff's royalties and intellectual property.
65. **WHEREFORE**, Plaintiff demands judgment against Defendants for compensatory, consequential and punitive damages and other relief he may be entitled to.

COUNT VIII
ACCOUNTING

66. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 65 of the Complaint as if fully set forth herein.
67. Plaintiff fully performed all obligations required by him under the Agreement.

68. Defendants are in possession of financial information and records owed on and derived from the commercial exploits of Plaintiffs' works, including the Compositions.
69. To date, Defendants have surreptitiously circumvented paying Plaintiff his respective revenue shares and failed to give any proper accounting of royalties derived from the Compositions.
70. Defendants have breached the accounting requirements of the Agreement in their continuous failure to pay Plaintiff all net sums actually earned and received by Defendants from the distribution and exploitation of the Compositions in a timely manner as well as provide regular accountings.
71. Defendants are required to account for any and all property and/or funds they have received relating to the Compositions or the Agreement, including but not limited to any and all proceeds from any sale of any of the Compositions and/or any royalties in connection with the Compositions.
72. Plaintiff has sent numerous letters requesting payment and accountings from Defendants with no success.
73. **WHEREFORE**, Plaintiff demands injunctive relief requiring Defendants to perform an accounting.

COUNT IX
CONSTRUCTIVE TRUST

74. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 73 of the Complaint as if fully set forth herein.
75. Plaintiff fully performed all obligations required by him under the Agreement.
76. To date, Defendants have surreptitiously circumvented paying Plaintiff his respective revenue shares and failed to give any proper accounting of royalties derived from the Compositions.
77. Defendants have breached the Agreement in their continuous failure to pay Plaintiff money owed to him from the distribution and exploitation of the Compositions in a timely manner, as well as to provide regular accountings.
78. Defendants continue to receive money owed to Plaintiff from the distribution and exploitation of the Compositions.
79. Defendants have breached their fiduciary duties to Plaintiff.
80. Plaintiff has sent numerous letters requesting payment and accountings from Defendants with no success.

81. Defendants have made deals with major third parties and assigned royalties associated with the Compositions at issue under the Agreement.
82. As a direct and proximate result of the foregoing material breaches of the Agreement and failure to account, Plaintiff has suffered, and will continue to suffer, loss of income due to him from royalties, publishing, distribution and merchandising.
83. Upon information and belief, Defendants have wrongfully, inequitably, and unjustly retained all proceeds Defendants received from the distribution and exploitation of the Compositions that were required to be paid to Plaintiff; and Defendants may very well have created a separate entity and/or entered into a separate publishing agreement, administration agreement or another similar agreement with another entity regarding the distribution and exploitation of the Compositions, all to circumvent Plaintiff's right to income pursuant to the Agreement.
84. Consequently, Plaintiff therefore seeks a court order imposing a constructive trust over the funds Defendants received under the Agreement.

COUNT X

LITIGATION EXPENSES

85. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 84 of the Complaint as if fully set forth herein.
86. Defendants have acted in bad faith and have been stubbornly litigious, entitling Plaintiff to his litigation expense, including attorneys' fees and costs pursuant to O.C.G.A. § 13-6-11.

COUNT XI

PUNITIVE DAMAGES

87. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 86 of the Complaint as if fully set forth herein.
88. Defendants' actions showed willful misconduct, malice, fraud, wantonness, oppression, and that entire want of care which would raise the presumption of conscious indifference to consequences as to entitle Plaintiffs to punitive damages against Defendants in accordance with O.C.G.A. § 51-12-5.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands a jury trial and requests, the following:

- a. That Plaintiffs recover from Defendants a sum in the amount to be determined by the jury, or in any amount that would fairly compensate Plaintiffs for the losses sustained as determined by the Court, but not be less than \$3,000,000.00;
- b. That the Agreement between the parties be declared terminated;

- c. That Plaintiff recovers compensatory, consequential and punitive damages and cost, expenses, and attorneys' fees;
- d. That Defendants divest themselves of any interest in any enterprise or intellectual property associated with the Compositions, including all profits made or royalties collected by Defendants;
- e. Order the dissolution of all agreements Defendants executed with third parties on behalf of the Plaintiff or his Compositions without his knowledge or consent;
- f. Order Defendants obtain and file, at Defendants' sole cost and expense, copyright assignments for the reversion of all copyright interests back to Plaintiffs;
- g. Require the Defendants to place in Trust all monies allegedly owed to Plaintiff by Defendant from the inception of the Agreement until such time as this can be heard and decided upon at trial; and
- h. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 9th day of October, 2020

/s/ James L. Walker
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CERTIFICATION

I hereby certify that I have this day served Defendants through last noticed counsel below via email and Statutory Electronic Service to the following:

Leron Rogers
Lewis Brisbois
1180 Peachtree Street, NE; Ste 2900
Atlanta, GA 30309
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Respectfully Submitted,

/s/ James L. Walker, Jr.
James L. Walker, Jr., Esq.
Attorney for Plaintiff