

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DARRYL AUSTIN,
PLAINTIFF

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CASE NO: _____

VS.

JURY DEMAND

JAY JENKINS p/k/a JEEZY, SAMMY
MUMPHERY and YJ PRODUCTIONS AND
CONCERTS,
DEFENDANTS

HONORABLE _____

ORIGINAL COMPLAINT

Plaintiff, Darryl Austin, brings this action by and through his attorney, Troy J Wilson, against Defendant JAY JENKINS (the performer known as “JEEZY”), an individual residing in Greater Atlanta, Georgia, YJ PRODUCTIONS AND CONCERTS, , an entity with its principal place of business in Georgia and used by JAY JENKINS, to do business, Sammy Mumphery, an individual residing in Georgia, (hereinafter collectively referred to as “Jenkins Defendants”) as it relates to Defendants’ breach of contract of a performance agreement, tortuous interference with business agreement, unjust enrichment, fraud, conversion, injunctive relief, accounting, and slander in connection with offering goods and services and in support, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This Court has Diversity Jurisdiction under 28 U.S.C. § 1332(a) because the parties are citizens of different states and citizens or subjects of a foreign state and the amount in controversy exceeds the sum or value of \$75,000.
2. This Court has supplemental subject-matter jurisdiction over the pendent state law claims under 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) as the negotiation and acceptance of the contract substantially occurred in this district; the injury to Plaintiff as a result Defendants' breach of the contract occurred in this district; the injury to Plaintiff as a result of Defendants' fraud occurred in this District, the injury to Plaintiff resulting from Defendants' unfair and deceptive trade practices and tortuous interference with agreement occurred in this District; the injury to Plaintiff resulting from Defendants conversion occurred in this District and Defendants are foreign entities and who regularly conduct business in this District, and the Plaintiff while is a full time resident of this District and does business in this District.

PARTIES

4. Plaintiff Darryl Austin is a promoter of entertainment events throughout the United States and is now, and was, at all times mentioned in this complaint, a citizen of the United States, doing business in Houston, Texas, residing in the Southern District of Texas.
5. Defendant JAY JENKINS is the performing artist known as "JEEZY" and is an American singer-songwriter, record producer and rapper who has sold millions of records worldwide. Defendant Jenkins is now, and at all times mentioned in this Complaint was, a citizen of the United States, residing in the Greater Atlanta, Georgia area.
6. Defendant JAY Jenkins is also the owner of the United States trademark "JEEZY" as it relates to entertainment services in the nature of live musical performances.
7. Sammy Mumphery, is on information and belief an individual residing in Atlanta, Georgia and the principal of Defendant YJ PRODUCTIONS AND CONCERTS, , and is a promoter and agent of Defendant, JAY JENKINS for the purpose of securing performance agreements throughout the United States. His entity accepted \$30,000 as a deposit for defendant JAY JENKINS in the negotiation and consummation of the agreement for a concert to be held in Houston, Texas on December 9, 2016. In the past, the plaintiff has negotiated with the same entity to secure performance of concerts in Houston, Texas by defendant, JAY Jenkins.
8. YJ Productions and Concerts, on information and belief, has its principal place of business in Atlanta, Georgia and is a company used by defendant, JAY JENKINS to engage promoters in agreements for performances throughout the United States. YJ Productions and Concerts, represents that it is an incorporated entity and if it isn't, it is used by the other defendants as an assumed name to procure business for defendant, JAY JENKINS.
9. At all times herein mentioned, all Defendants, both individually and collectively, are and were agents and/or joint venturers of each other, and in doing the acts alleged herein were acting within the course and scope of such agency.

10. Each Defendant had actual and/or constructive knowledge of the acts of the other defendant(s) as described herein, and ratified, approved, joined in, acquiesced in, and/or authorized the breaching and/or infringing acts of the other, and/or retained the benefits of said breaching and/or infringing acts.
11. As a result, each and every defendant should be held jointly and severally liable for the actions and/or omissions complained of herein.

FACTS

12. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 11 of this Complaint, as if fully alleged herein.
13. Defendants are performers and/or promoters who engage in concerts throughout the United States and entered into a performance agreement to perform at a concert where defendant JEEZY was to perform a concert and such show was scheduled to be held on December 9, 2016 at the Arena Theatre in Houston, Texas, "the Venue" but which defendant, JEEZY, failed to perform.
14. Plaintiff and defendants engaged in negotiations for defendant JEEZY to perform at the Concert and the authorized agent for Defendant, JEEZY, and Plaintiff Austin reached an agreement for the event which was later reduced to writing. (See Exhibit "A")
15. On or about October 5, 2016, the parties finally reached an oral agreement regarding the material terms of Defendant Jenkins's performance: namely that Plaintiff promoters and owners of the Concert would pay \$60,000.00 (Sixty Thousand U.S. Dollars) for a 60 minute performance with tracks.
16. On October 6, 2016, Defendants, through YJ PRODUCTIONS AND CONCERTS, sent Plaintiff Austin a written offer which included the material terms under which the parties had already agreed to in principal: Defendant Jenkins would be paid a performance fee in the amount of \$60,000.00 (Sixty Thousand U.S. Dollars) for a 60 minute performance on December 9, 2016. See the Agreement which is attached as Exhibit "A."
17. In furtherance of the agreement, Plaintiff, Darryl Austin, hand-delivered to Defendants payment in the amount of \$30,000.00 (Thirty Thousand U.S. Dollars) which no less than \$20,000.00 being deposited directly into the checking account of Defendant, JAY JENKINS' management, Agency 99.
18. Consistent with the defendants' course of conduct, once plaintiff made the initial deposit, he was free to advertise and promote the event which he started doing by paying for the venue, buying radio space, and arranging ticket sales through a vendor ticketing service. Defendant, Sammy Mumphery, defendant, JEEZY's authorized agent, has never complained about any of the aforementioned activities by plaintiff.

19. Subsequently, in November, 2016, plaintiff, Darryl Austin, received word through an authorized representative that defendant, JEEZY, had decided he did not want to perform at the agreed upon venue. He was informed that tickets were already being sold and over a thousand tickets had been sold at the time.
20. While plaintiff sought to make concessions to appease defendant, JEEZY, he insisted he would not perform, despite having the event on his official calendar, and informed plaintiff that he was not going to return the deposit he had submitted.
21. Thereafter, representatives for defendant, JEEZY, started asking plaintiff to pay more for the performance, in the amount of \$80,000. Feeling cornered and in distress, Plaintiff agreed to pay more money for the performance.
22. However, at the last minute, defendant JEEZY, decided to attend an album release party in Atlanta for his new album and nix the December 9, 2016 performance in Houston. Plaintiff offered to reschedule the date to December 17, 2017 because defendant was already scheduled to perform in Dallas, Texas on December 18, 2017. Alternatively, plaintiff agreed to pay for a private jet to fly defendant to Atlanta following the event in Houston on December 9, 2016. Despite these offers of accommodation, defendant still refused to perform and refused to return the \$30,000 he had taken as a deposit.
23. Plaintiff, informed the ticket buyers and the public that the Jeezy concert was canceled and in response to disappointed fans and their comments, defendant JEEZY wrote degrading comments about plaintiff and blamed everything on the plaintiff for why he did not perform. Defendant JEEZY made such derogatory comments toward plaintiff that it constitutes slander.
24. While defendant, JAY JENKINS's representatives claimed that he knew nothing about this event on that date, this is inconsistent with the facts and the representations of his authorized agent, YJ Productions, who has contracted concerts for defendant, JAY JENKINS, throughout the United States including events in Texas and events booked by plaintiff over several years and performed by defendant at the Arena Theatre in Houston.
25. Furthermore, communications between plaintiff, Darryl Austin, and Jenkins's authorized agent, YJ Productions and Agency 99, defendant's management, were directly made in a way that included defendant Jenkins in the information loop with Jenkins never interceding to stop negotiations or finalization of the performance agreement.
27. Plaintiff, Darryl Austin, purchased radio time from stations in Houston to promote the event. He paid money to reserve the venue in Houston. These costs were lost as a result of the actions of defendants. Furthermore, plaintiff deprived himself of other lucrative engagements in order to reserve his professional availability for this Concert.
28. Plaintiff Darryl Austin did not do anything that would cause defendants to renege on their obligation to perform on December 9, 2016 pursuant to the agreement.

**COUNT I
BREACH OF CONTRACT**

29. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28 of this Complaint, as if fully alleged herein.
30. As described above, the October 6, 2016 written agreement was accepted by Plaintiff and defendant, Jenkins and constitutes a valid contract.
31. Defendant's agent's signature on the agreement constituted acceptance of the agreement which was entitled, "Performance Agreement."

Contract Formation: Consideration

32. The Performance Agreement is supported by consideration in the form of an exchange of mutual promises. Defendants agreed to perform for 60 minutes. In exchange, Plaintiff promised to pay Defendants \$60,000.00.
33. In addition or in the alternative, the Performance Agreement is supported by further consideration in the form of each party foregoing legal obligations and rights. Plaintiff let go of booking alternative performances. Defendants allowed advertisements that Defendant JEEZY would be headlining their Concert.

Defendants' Breach of Express Terms

34. Rather than executing a long form agreement in good faith, after Plaintiff Austin accepted Defendants' material terms, Defendants informed Plaintiff that they would not honor the Performance Agreement, thereby breaching the agreement.

Defendants' Breach of Implied Contract Terms

35. The Performance Agreement, like all contracts entered into in Texas, contained an implied duty of good faith and fair dealing. Defendants had a duty to perform its obligations under the Performance Agreement consistent with its duty of good faith and fair dealing and Defendants breached the same by unilaterally refusing to honor the same while continuing to maintain Plaintiff's initial deposit and wasting the advertisement and promotion of the Concert that enticed consumers to purchase tickets.

Causation and Damages

36. As an actual and proximate result of Defendants' breaches of these express and implied contractual terms described herein, Plaintiff Darryl Austin has suffered harm and is threatened with additional harm. Plaintiff has been damaged insofar as he is being denied the benefit of the concert which would have profits exceeding

\$100,000.00, he forewent other performance opportunities expecting the presence of Defendant, JEEZY on December 9, 2016; moreover his reputation has been damaged in that Defendant's fans are now expecting him to perform and have tickets to see him perform only to be disappointed to find out that he will not be performing, and think it is Plaintiff, Darryl Austin's fault. The venue has lost confidence in Plaintiff Darryl Austin's ability to follow through when he books events at their facility and will require more upfront money for him to reserve events and refuse to return any payments made thus far for this event. Moreover, he incurred expenses in preparing for the presence of JEEZY at the event including radio advertisement and other promotional activities, among others to be shown at trial. At the time of defendant's cancellation of this event, there was \$154,000 of gross revenue from ticket sales for the December 9, 2016 concert and defendant was aware of this fact.

37. Plaintiff has attempted to mitigate his damages but given the late notice of Jenkins's breach and his status as a performer and the promotional activities already done, Plaintiff has not been successful in booking an alternative performance.

Specific Performance

38. As a result, monetary damages may be insufficient to remedy Plaintiff's reputational damages and Defendants should be required to specifically perform under the terms of the Performance Agreement.
39. *In the alternative*, if the Court determines that an award of damages will be a sufficient remedy, Plaintiff seeks damages for Defendant's breach of contract to the maximum extent allowed by law, loss profit, and, in any case, interest, costs, and attorneys' fees in an amount to be determined at trial.

COUNT II FALSE REPRESENTATIONS AND DETRIMENTAL RELIANCE

40. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39 of this Complaint, as if fully alleged herein.
41. Defendants, by their false representations caused Plaintiff's detrimental reliance upon their representations resulting in wrongful deprivation of Plaintiff's good name and reputation, and financial damages in loss of expenses paid, loss of profits, attorney fees and costs.
42. Plaintiff's action concerning Defendants' misrepresentation is related to Plaintiff's breach of contract action since both actions are based on the same operative facts.
43. These acts of misrepresentation made by Defendants have caused Plaintiff damages in that fans of JEEZY have purchased tickets to see Defendant Jenkins perform under the tradename "JEEZY," when Defendant Jenkins will not be

performing due solely to Defendants' actions. As a result, the JEEZY fans will be disappointed, tarnishing the reputation of the promoter, Darryl Austin.

**COUNT III
FRAUD AND CONVERSION**

44. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43 of this Complaint, as if fully alleged herein.
45. The conduct of defendants constitute fraud in that they individually and collectively tricked Plaintiff into giving them a deposit of \$30,000.00 knowing that they had no intention of performing the event on December 9, 2016 and converted the money for their own use.
46. In fact, defendant, JEEZY, had another event scheduled in Atlanta, Georgia on December 9, 2016 while his representatives were negotiating a higher performance fee for the event in Houston, Texas. But in order to deprive plaintiff of his money, defendants defrauded plaintiff into an agreement defendants knew was never planned to fulfill and to this date defendants have failed to return any of the deposit to plaintiff thus converting it for their own use.
47. Plaintiff encourages this court for punitive damages against defendants for their willful fraud committed in this transaction and scheme.

**COUNT IV
TORTIOUS INTERFERENCE WITH AGREEMENT**

48. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 47 of this Complaint, as if fully alleged herein.
49. Once plaintiff and defendants had an agreement in place, defendant, JEEZY, implored his own representatives to interfere with the agreement in place between the venue and the promoter, Plaintiff, Darryl Austin.
50. The venue and Plaintiff, Darryl Austin, had an agreement for his use of the Arena Theatre for a concert with JEEZY on December 9, 2016 but defendants began to complain about the venue and how it was unsuitable for performance despite having been used by defendant JEEZY on at least six (6) other occasions including August 10, 2008, August 21, 2010, May 17, 2013, March 28, 2014, November 23, 2014 and November 20, 2015. This conduct and these accusations about the venue and disavowing the concert date, damaging the relationship between the venue and plaintiff, Darryl Austin.
51. By refusing to perform pursuant to his contract with plaintiff, Darryl Austin, defendant, JEEZY, made the building of no use for Darryl Austin and the venue on

December 9, 2016 which impacts concession sales and profits from parking and causes a conflict in the relationship between the venue and Darryl Austin.

52. This will result in higher costs and expenses for Darryl Austin and the possible deprivation of use of the facility for future events.
53. Defendants should be made to pay all expenses related to their tortuous interference of an agreement.
54. Plaintiff encourages this court to punitive damages against defendants for their willful fraud committed in this transaction and scheme.

COUNT V ACCOUNTING

55. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 54 of this Complaint, as if fully alleged herein.
56. Plaintiff asks this court to order Defendants to give an accounting for the \$30,000.00 deposit paid by plaintiff and to provide evidence of what happened to the \$30,000.00 from the time it was received until the date of the accounting, including the bank accounts or other financial accounts in which the deposit was deposited.
57. Plaintiff believes, because defendant, YJ Production, has represented that defendant, JAY JENKINS commingled the \$30,000.00 with his own funds and has failed to give an account of same to Plaintiff.

Because defendant Sammy Mumphery was at all relevant times working in concert as the authorized agent of JAY JENKINS, Plaintiff asks the court to hold each of the defendants individually and jointly liable to plaintiff for the breaches alleged in this petition.

WHEREFORE, Plaintiff Darryl Austin, by and through his attorney, Troy J Wilson, request judgment against the Defendants, jointly and severally, for:

1. Breach of contract damages in the amount of at least \$100,000.00;
2. Return of the \$30,000 paid as a deposit and not refunded;
3. Compensatory damages in the form of damage to reputation;
4. Compensatory damages for those expenses Plaintiff incurred in preparing to be present to perform at the Concert;

5. *In the alternative*, an order requiring Defendants to specifically perform the Performance Agreement;
6. Additional damages for an amount determined at trial for unfair and deceptive trade practices, fraud, detrimental reliance, unjust enrichment and tortious interference
7. Punitive damages for willful fraudulent conduct;
8. Reasonable attorney fees;
9. The costs of this action including, but not limited to, expert fees;
10. Such other and further relief as the court deems proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues.

Respectfully submitted,

/s/ Troy J Wilson

Attorney for Plaintiff

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