

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

PRESENT: HERNAN CAIN
Justice

PART 49

Lohan, Michael

INDEX NO. 603010/01

MOTION DATE 7/15/02

MOTION SEQ. NO. 002

MOTION CAL. NO. 1P

- v -

Ford models

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

OCT 08 2002
NEW YORK
COUNTY CLERKS OFFICE

MOTION IS DECIDED IN ACCORDANCE
WITH DECISION IN MOTION SEQUENCE
DECISION IN MOTION SEQUENCE

Dated: 10/4/02

J.S.C.

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

-----X
MICHAEL LOHAN,

Plaintiff,

Index No.
603010/01

-against-

FORD MODELS, INC. and WILLIAM FORD,

Defendants.
-----X

FILED
OCT 08 2002
NEW YORK
COUNTY CLERK'S OFFICE

HERMAN CAHN, J.:

Defendants Ford Models, Inc. ("Ford Models") and William Ford move to dismiss the amended complaint, CPLR 3211(a)(7).

On November 29, 1999, plaintiff Michael Lohan entered into an employment agreement to perform services for Ford Models, including but not limited to the organization, supervision and administration of an entity known as Cold Spring Productions ("CSP") and the discovery and marketing of properties and scripts for film and television. Lohan was given the title of managing director, an annual salary of \$104,000, and was to be a one-third shareholder in CSP. The contract was for a term ending September 30, 2000 and was renewable by mutual agreement of the parties. Paragraph 12(c) gave Ford Models the right to terminate the contract for cause, including but not limited to acts of moral turpitude.

Lohan alleges that he owned the rights to a script for a movie to be known as "Zoey and Me," and assigned these rights to CSP. He claims to have performed services for CSP, i.e.. he

contacted individuals who might be interested in financing motion pictures to be produced through CSP. Lohan states that he introduced William Ford to two investors, who were prospective financiers for "Zoey and Me." Lohan asserts that the introduction ultimately led to the sale not only of CSP, but also of Ford Models, to the two investors. He seeks recovery of a percentage of the sale proceeds of both enterprises.

During the term of the agreement, Lohan, who had prior criminal violations, was charged with several federal crimes. He pleaded guilty to several offenses, including criminal possession of a forged instrument in the second degree and criminal contempt in the first degree, in the United States District Court, and was sentenced to 20 months' incarceration. He was released from prison in September 2001.

When Lohan demanded a portion of the sale proceeds of Ford Models and sought to enforce rights under the employment agreement, defendants took the position that by reason of the criminal convictions, Lohan forfeited all rights to compensation. Lohan then commenced the instant action.

The original complaint contained three causes of action.

The first cause of action alleged that in return for Lohan's services, defendants were supposed to complete the formation of CSP but never did so; that despite his performance of services, he never received any proceeds or profits from CSP.

The second cause of action alleged that Lohan located and introduced Ford to certain persons or entities who in addition to discussing potential financing for upcoming motion picture projects, expressed interest in purchasing all or part of Ford's business, and that ultimately, these persons and entities purchased Ford Models, Inc. for \$52 million. Plaintiff claims that as a result

of his efforts, he is entitled to a finder's fee of 5 percent of the sales proceeds.

The third cause of action alleged that defendants wrongfully canceled plaintiff's family health insurance, and wrongfully confiscated his personal computer and files. Lohan seeks recovery of the reasonable value of the amount of back wages due and the value of the insurance.

Ford moved to dismiss the complaint. On March 14, 2002, this court issued an order granting the motion in part. This court found that by reason of Lohan's criminal conviction, Ford had the right to terminate the contract on a prospective basis, but that if Lohan's activities prior to his conviction brought about the sale of CSP, Lohan had a viable claim for one-third of the sales proceeds. Thus, this court dismissed the second cause of action, and limited the third cause of action to wages and health insurance benefits covering the period prior to plaintiff's incarceration. Moreover, this court dismissed the first cause of action, with leave to replead as to this cause of action only.

Lohan has now served an amended complaint. The first cause of action claims a stock interest in CSP. Ford's papers contain an extensive discussion of Lohan's criminal conviction. Ford contends that the "motion picture and entertainment division" of Ford is separate and distinct from CSP, and that since the formation of CSP was never completed, Lohan has no basis to recover any portion of the proceeds of sale of the motion picture properties. Although Lohan's criminal conviction gave Ford the right to terminate Lohan's contract on a prospective basis, the conviction does not affect Lohan's rights, if any, to recovery for his pre-conviction services. If in fact Lohan rendered services that led to the sale of Ford's motion picture and entertainment assets, Ford cannot defeat his right of recovery merely by refusing to issue the CSP stock. Hence, the branch of the motion seeking dismissal of the first cause of action, is denied.

The second cause of action is somewhat unclear, but it appears to seek a constructive trust in connection with the assets of CSP and/or Ford. In order to impose a constructive trust, a party must show (1) a confidential or fiduciary relationship; (2) a promise or agreement; (3) a transfer in reliance on the agreement; (4) a breach of the promise; and (5) unjust enrichment (Jennings v Hurt, 160 AD2d 576 [1st Dept 1990]). Since plaintiff has shown neither a confidential or fiduciary relationship nor a transfer in reliance upon such relationship, there is no basis for this cause of action. Lohan never had a property interest in Ford itself. However, since the formation of CSP was never completed, and there may be legal impediments to Lohan's recovery on the contract (first) cause of action, this court will modify its prior order to permit Lohan to add a cause of action in quantum meruit regarding his work in connection with the motion picture and entertainment properties of Ford. This claim shall not relate to the sale of any Ford assets other than the motion picture, entertainment or television properties.

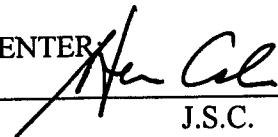
Ford indicates that it did not terminate Lohan's health insurance benefits until after Lohan's criminal conviction, and that in any event Lohan sustained no damages as a result of the termination of health insurance. Since Lohan has not responded, this court will presume that the third cause of action has been abandoned.

Accordingly, the motion is granted to the extent that the third cause of action is dismissed, and that the second cause of action is dismissed, with leave to replead a cause of action in quantum meruit.

The foregoing constitutes the decision and order of the court.

Dated: October 4, 2002

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J.S.C.