

NORTH CAROLINA
GUILFORD COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 8163

2019 AUG 23 A 11:51

STEVEN MCRAE,
Plaintiff,

)
GUILFORD CO., N.C.
)
BY *[Signature]*)

v.

COMPLAINT

KYLE RUSSELL CURTIS
Defendant.

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Plaintiff Steven McRae, complaining of the acts of Defendant, alleges and says:

PARTIES

1. Plaintiff Steven McRae is a citizen and resident of Riverside County, California.
2. Defendant Kyle Russell Curtis is a citizen and resident of Guilford County, North Carolina.

JURISDICTION AND VENUE

3. Jurisdiction over this matter is proper in this Court pursuant to N.C. Gen. Stat. § 1-75.4 (1), (5), and (6).
4. Venue is appropriate in this Court pursuant to N.C. Gen Stat. § 1-82.

BACKGROUND

5. Plaintiff independently operates a YouTube channel commonly known as Steve McRae.
6. In or around December 2017, Defendant approached Plaintiff via YouTube message about the possibility of creating and co-hosting a new online podcast for public entertainment.

7. Plaintiff and Defendant subsequently entered into a verbal business agreement (the “**Agreement**”) to create and air podcast episodes now commonly known as The NonSequitur Show (the “**Podcast**”).

8. Prior to the launch of the Podcast, Plaintiff approached Defendant to suggest expanding the business endeavor to include a YouTube Channel (the “**Channel**”).

9. Given Defendant’s interest in co-hosting NonSequitur on YouTube as well, Plaintiff created the Channel and by default, served as the primary owner of the Channel. The Podcast and the Channel are hereinafter collectively referred to as “**NonSequitur.**”

10. Under the Agreement, Plaintiff and Defendant would appear as co-hosts on NonSequitur, would have equal decision-making authority regarding NonSequitur’s operation and airing, and would equally divide any potential proceeds deriving from NonSequitur’s financial success.

11. On NonSequitur, Plaintiff and Defendant discussed various topics including but not limited to current events and ongoing controversial political and philosophical issues. Oftentimes special guests would appear on NonSequitur to contribute expertise and insight as to each episode’s topic.

12. As primary owner, Plaintiff had administrative rights which allowed him to access financial documents in the event that NonSequitur became financially profitable.

13. On or around December 31, 2017, Defendant informed Plaintiff that in order to establish search engine optimization and maximize the viewer traffic of NonSequitur’s videos, Plaintiff would need to release the primary ownership rights of the Channel to Defendant.

14. Relying on Defendant’s representations regarding search engine optimization, Plaintiff transferred primary ownership of the Channel and the accompanying administrative rights

to Defendant.

15. On January 17, 2018, NonSequitur debuted its first video on the Channel.

16. In or around July 2018, NonSequitur began profiting significant revenue, stemming from advertising payouts, merchandise sales, donations, and several other revenue streams.

17. Shortly thereafter, Plaintiff requested access to the financial statements provided to Defendant from YouTube in addition to his portion of NonSequitur's profits. Defendant asked Plaintiff to patiently wait until April of 2019 so that Defendant could first handle NonSequitur's taxes.

18. On April 16, 2019, Plaintiff again requested his portion of NonSequitur's proceeds. Defendant stated that his accountant would contact the Plaintiff soon. Defendant refused to disclose the identity of said accountant and Plaintiff was never contacted.

19. After multiple other attempts by Plaintiff to collect his share of NonSequitur's proceeds, Defendant informed Plaintiff of his intent to retain the entirety of NonSequitur's earnings from certain revenue streams and stated that Defendant alone operated the Channel.

20. On June 11, 2019, Plaintiff and Defendant participated in a preliminary show (the "**Pre-Show**") in anticipation of a live show which was ultimately posted by Plaintiff on his separately-owned YouTube channel and titled "The Death of NonSequitur Show."

21. During the Pre-Show, Defendant expressed his intent to change the direction of NonSequitur and to strip Plaintiff of his interest and rights in NonSequitur's operations moving forward.

22. On the same day, Defendant utilized his primary ownership rights to bar Plaintiff from further accessing the Channel in Plaintiff's capacity as a NonSequitur co-host and partner of the business endeavor.

23. Defendant conceded that he owes Plaintiff half of the proceeds from NonSequitur's various streams of revenue up until Plaintiff's ouster as a co-host on NonSequitur; however, Defendant has refused to provide Plaintiff with the same.

24. Defendant continues to refuse Plaintiff access to the financial information related to NonSequitur's profitability.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

25. The allegations contained in the paragraphs above are incorporated by reference as if fully set forth herein.

26. The Agreement between Plaintiff and Defendant is an enforceable contract.

27. Plaintiff fully performed his obligations under the Agreement by appearing on NonSequitur as a co-host and managing the operations of NonSequitur.

28. Defendant's failure to provide Plaintiff with access to the financial documents regarding NonSequitur and his equal share of the profits serves as a violation to the terms of the Agreement.

29. Defendant's interference with Plaintiff's access to the Channel in his capacity as a co-host serves as a violation to the terms of the Agreement.

30. Pursuant to the terms of the Agreement and Defendant's public statement on the Pre-Show, Defendant remains liable to Plaintiff for half of NonSequitur's profits and the disclosure of the financial documents associated with NonSequitur's financial condition.

31. The amount owed to Plaintiff by Defendant is for a sum certain in excess of \$25,000.

32. Plaintiff has fully performed his obligations under the Agreement.

SECOND CLAIM FOR RELIEF
(Fraud)

33. The allegations contained in the paragraphs above are incorporated by reference as if fully set forth herein.

34. As an inducement for Plaintiff to surrender primary ownership rights of the Channel to Defendant, Defendant represented to Plaintiff that Defendant was required to obtain such rights for the purpose of establishing search engine optimization.

35. Defendant's representation to Plaintiff concerning Defendant's need for primary ownership rights of the Channel were false, were made with the intent to deceive Plaintiff, and/or were made with the intent to induce Plaintiff to otherwise transfer the primary ownership rights of the Channel to Defendant so that Defendant acquired sole administrative control of the Channel.

36. After Defendant's acquisition of primary ownership rights of the Channel, Defendant excluded Plaintiff from accessing the Channel and ultimately informed Plaintiff that he intended to carry on NonSequitur without Plaintiff.

37. The false representations of the Defendant were material and were reasonably calculated to deceive Plaintiff into transferring primary ownership rights of the Channel to Defendant.

38. Upon information and belief, Defendant knew or should have known that Plaintiff would not have transferred the primary ownership rights of the Channel without the assurances of Defendant that such was necessary to establish search engine optimization, and that Plaintiff would not have transferred primary ownership rights of the Channel had it known the representations and assurances made by Defendant were false or made with the intention of excluding Plaintiff from the Channel's operations.

39. The false representations of the Defendant were made with the intent to deceive Plaintiff and with the intent for Plaintiff to act upon the false representations by transferring primary ownership rights of the Channel to Defendant.

40. Plaintiff was in fact deceived by the Defendant's false representations that primary ownership rights of the Channel were to be transferred to Defendant for the purpose of establishing search engine optimization.

41. Plaintiff has suffered damage in an amount in excess of \$25,000 to be determined at trial.

THIRD CLAIM FOR RELIEF
(Conversion)

42. The allegations contained in the paragraphs above are incorporated by reference as if fully set forth herein.

43. The Agreement and the subsequent behavior of Plaintiff and Defendant memorialize the existence of a general partnership, creating a fiduciary relationship between the parties pursuant to N.C. Gen. Stat. § 59-36 and 37.

44. The Agreement provided that Plaintiff and Defendant would equally share and distribute the profits deriving from NonSequitur's success.

45. By refusing to provide Plaintiff with his equal share of NonSequitur's profits, Defendant has interfered with and deprived Plaintiff of its right of possession.

46. Defendant, through his actions, has exerted an unauthorized assumption and exercised right of ownership over Plaintiff's funds to the exclusion of Plaintiff.

47. Defendants' conversion of Plaintiff's funds has damaged Plaintiff in an amount greater than \$25,000.

FOURTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

48. The allegations contained in the paragraphs above are incorporated by reference as if fully set forth herein.

49. The Agreement and the subsequent behavior of Plaintiff and Defendant memorialize the existence of a general partnership, creating a fiduciary relationship between the parties pursuant to N.C. Gen. Stat. § 59-36 and 37.

50. Defendant breached his fiduciary duty to Plaintiff by converting and misappropriating Plaintiff's share of the funds for his own personal use, or by otherwise depriving Plaintiff of the same.

51. Defendant breached his fiduciary duty to Plaintiff by refusing to allow Plaintiff to review the financial documents associated with NonSequitur, in violation of N.C. Gen. Stat. § 59-49 and N.C. Gen. Stat. § 59-52.

52. Defendant breached his fiduciary duty to Plaintiff by refusing to provide Plaintiff with a formal accounting of NonSequitur's operations, in violation of N.C. Gen. Stat. §59-52.

53. Plaintiff has been damaged in an amount to be proven at trial as a result of Defendant's breach of his fiduciary duty to Plaintiff.

54. In addition, Plaintiff's damages are ongoing and increasing due to Defendant's continuous operation of NonSequitur without Plaintiff and due to Defendant's continuous collection of profits deriving from Plaintiff's previous contribution to NonSequitur's fan-base.

FIFTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices)

55. The allegations contained in the paragraphs above are incorporated by reference as if fully set forth herein.

56. The Defendant engaged in unfair or deceptive conduct by virtue of his fraudulent conduct with respect to Plaintiff, his conversion of funds for which Plaintiff was entitled, and his multiple breaches of his fiduciary duty pursuant to the existing partnership.

57. The Defendant's actions and conduct were in or affecting commerce.

58. The Defendant's unfair and deceptive conduct harmed Plaintiff and, pursuant to N.C. Gen. Stat. § 75-16, Plaintiff is entitled to recover compensatory damages in an amount exceeding \$25,000.00, to have such damages trebled, and to recover attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

SIXTH CLAIM FOR RELIEF
(Quantum Meruit)

59. The allegations contained in the paragraphs above are incorporated by reference as if fully set forth herein.

60. In the alternative, if and to the extent the Agreement is found unenforceable, Plaintiff pleads a claim in quantum meruit.

61. Plaintiff performed his duties as co-host and as a partner to the business relationship created between himself and Defendant.

62. Plaintiff's contribution to NonSequitur's publicity and financial success are valuable to Defendant.

63. At the time of performance, Plaintiff reasonably expected to be paid for the value of his contribution to NonSequitur's profitability.

64. Defendant voluntarily accepted the benefit of Plaintiff's contribution to NonSequitur knowing that Plaintiff expected to be paid for the same.

65. Defendant has failed and refused to pay Plaintiff his equal portion of NonSequitur's proceeds.

66. Plaintiff has been damaged by Defendant's failure to pay in an amount in excess of \$25,000 to be determined at trial.

SEVENTH CLAIM FOR RELIEF
(Unjust Enrichment)

67. The allegations contained in the paragraphs above are incorporated by reference as

if fully set forth herein.

68. By acting as co-host on NonSequitur and contributing to NonSequitur's publicity and financial success, Plaintiff conferred a benefit on Defendant.

69. Defendant accepted the benefit conferred by Plaintiff.

70. Plaintiff did not participate in the operations of NonSequitur as a gratuity, but with the expectation of receiving payment for doing so as a partner to the business endeavor.

71. Defendant has been unjustly enriched by the value of Plaintiff's contribution to NonSequitur's publicity and financial success by retaining the entirety of NonSequitur's proceeds.

72. Plaintiff has been damaged by Defendant's failure to pay in an amount in excess of \$25,000 to be determined at trial.

WHEREFORE, Plaintiff respectfully prays that the Court:

1. Enter judgment against Defendant for actual damages incurred by Plaintiff in the amount of half of NonSequitur's proceeds for Defendant's breach of the Agreement, such amount to be calculated pursuant to the NonSequitur financial documents held by Defendant and withheld from Plaintiff;

2. Award Plaintiff reinstatement of primary ownership rights to the Channel.

3. Award Plaintiff relief in an amount in excess of \$25,000 on its claim for fraud against Defendant;

4. Award Plaintiff compensatory and treble damages in an amount in excess of \$25,000 on its claim for unfair and deceptive trade practices against Defendant;

5. In the alternative, award Plaintiff relief on its claim for quantum meruit against Defendant.

6. Enter judgment against Defendant for Plaintiff's reasonable attorneys' fees.
 7. Tax the costs and fees, against Defendant to the maximum extent allowed by law;
- and
8. Provide such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 23rd day of August, 2019.



C. Scott Meyers
N.C. State Bar No. 30651
Jonathan M. Parisi
N.C. State Bar No. 54210
CONNORS MORGAN, PLLC
1175 Revolution Mill Dr., Suite 8
Greensboro, North Carolina 27405
Phone: (336) 333-7907
Fax: (336) 333-7909
Attorneys for Plaintiff