

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

	X	
SELWYN BOUGARD known as El-Divine Amir Bey,	:	
an individual p/k/a “4th Disciple” ,	:	Index No.:
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
Mitchell Diggs, Diggs Family Music, Inc., Robert	:	
Fitzgerald Diggs and Wu-Tang Production Inc.,	:	
	:	
Defendants.	:	
	X	

Plaintiff, Selwyn Bougard, now known as El-Divine Amir Bey and p/k/a “4th Disciple” (hereafter “Bey” or “Plaintiff”), by and through his undersigned attorneys, brings this action for Breach of Contract, Conversion, Unjust Enrichment, Accounting, Declaratory Judgment, and Constructive Trust against Defendants Robert Fitzgerald Diggs p/k/a “RZA” (hereafter “RZA”), Wu Tang Production, Inc. (hereafter “Wu Tang”); Mitchell Diggs (hereinafter “Diggs”), and Diggs Family Music, Inc. (hereafter “Diggs Family”), (RZA, Wu Tang, Diggs, and Diggs Family collectively “Defendants”), and alleges as follows:

STATEMENT OF THE CASE

This is a case about two (2) brothers that together built a rap music empire but along the way neglected to account and pay royalties to one of their main music producers.

THE PARTIES

1. Plaintiff Selwyn Bougard, an individual and real party in interest now known as as El-Divine Amir Bey (“Bey”), is a music songwriter and producer known by the stage name “4th Disciple” and is one of the best-known Wu Tang-affiliated producers.
2. Defendant Robert Fitzgerald Diggs p/k/a (“RZA”), an individual residing and working in New York is an american rapper, record producer, actor, filmmaker, and author. RZA is also the *de facto* leader of the popular Staten Island based rap collective known as the Wu Tang Clan as well as head of Defendant Wu Tang Production, Inc., (“Wu Tang”), a music production company whose principal place of business at relevant times was c/o Robert F. Diggs 234 Morningstar Road, Staten Island, New York, 10304. Diggs is a citizen of California, residing at 12 Mustang Lane, Bell Canyon, CA 91307.
3. Defendant Mitchell Diggs (“Diggs”) is RZA’s brother, and head of Diggs Family Music Inc., a music publishing company and copyright administrator (“Diggs Family”) whose principal place of business at relevant times was 99 University Place, 9th Floor, New York, NY 10003. Mitchell Diggs is also a citizen of New York residing at 60 Windham Loop, Staten Island, New York 10314.
4. Plaintiff is further informed and believes that Defendants at all times alleged shared the same office as well as the same attorney, Tim Mandelbaum, Esquire, and were each the agents and employee of the other and that in doing the things herein alleged were acting in the course and scope of such agency, employment, and/or conspiracy.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over all Defendants pursuant to New York Civil Practice Law and Rules Sec 301 and 302 because they were transacting business in the state of New York, having engaged in acts in violation of Plaintiff's rights in the State of New York, and/or have been and are causing injury to Plaintiff in the state of New York.

6. Venue is proper in the County of New York pursuant to the Diggs Family Music Inc. -w-Selwyn Bougard p/k/a "4th Disciple"/Publishing and Exclusive Administration Agreement (the "Publishing Agreement") dated May 23, 1997, which provides for sole jurisdiction in New York over any controversies regarding the Publishing Agreement. (*See Exhibit A.* the Publishing Agreement. Par. 21, Governing Law).

FACTS

7. In 1993, Wu Tang Clan, the rap group, released an album called "Enter The Wu Tang: 36 Chambers". The Album was, and still is, extremely popular.

8. Shortly thereafter in 1993 or 1994, Bey, a young, talented, and hungry up-and-coming producer from Ohio, went to New York and without any legal representation, signed an exclusive Production Agreement (the "Production Agreement") with RZA and Wu Tang Productions.

9. Bey does not have a copy of the Production Agreement but upon information believes that Defendants have the Production Agreement and/or that Defendant's attorney has the Production Agreement.

10. Defendants were represented at the time by prominent entertainment attorney and current Fox Rothschild Partner, Thomas I. Mandelbaum, Esquire ("Mandelbaum"). Mandelbaum's firm at the time, Selverne, Flam & Mandelbaum drafted the Publishing Contract and the Production

Agreement at issue and Mandelbaum by his own admission has continuously represented the Defendants without interruption and continues to represent the Defendants today.

11. It was the intention of the two (2) Diggs brothers to control 100% of all Wu-Tang related projects, by working together to own both the Master Recordings and Music Publishing on all Wu-Tang related products and/or releases.

12. Bey, then known as 4th Disciple was very prolific under the 1993/94 Production Agreement and on May 23, 1997, (again) without representation of counsel, signed a oppressive one-sided exclusive publishing and administration agreement (the Publishing Agreement”) with Diggs Family.

The Publishing Agreement between Bey and Diggs Family

13. **Ownership of the Compositions/Royalties:** Under the Publishing Agreement, the Ownership of the Compositions, written and produced by Bey are owned 100% by Diggs Family subject to the continuing obligation to pay Bey, 50% of mechanical royalties (Par. 7(b); 50% of synchronization income (Par. 7(c); and, 50% of Other Income (Par. 7(d).

14. **Accounting:** Diggs Family also has the obligation to account to Bey (Par. 8).

15. **Assignment:** Diggs Family also had the right to assign the compositions. (Par. 11).

16. Since Plaintiff has never received an accounting statement nor any royalties under either the Production Agreement nor the Publishing Agreement, he has no idea what Recordings are being claimed by Defendants under the Production Agreement nor what Compositions are being claimed under the Publishing Agreement.

17. Plaintiff also does not know whether Defendants have assigned the copyrights to major music publishers or independent publishers and Plaintiff has a contractual right to know and to receive accounting and royalty statements.

18. Despite repeated demands to receive payment and an accounting from Defendants, Plaintiff has never received any royalties for co-writing and producing the following partial list of recordings, collectively hereafter sometimes referred to as (“Plaintiffs’ Works” or the “Works”).

The Works:

19. Upon information and belief, Bey is responsible for co-writing and/or producing or co-producing the following recordings, which have generated large sums of money for the Defendants, which the Plaintiff is not privy to. A list of the Works in question is attached hereto as **Exhibit B**, 4th Disciple’s partial Discography.

20. Because Defendants have been receiving money from various record companies, publishing companies, and other unknown sources, and keeping Plaintiff’s contractually due royalties, Bey is forced to sue as follows.

FIRST CAUSE OF ACTION

Breach of Contract

21. Plaintiff repeats and re-alleges previous allegations contained in the preceding paragraphs of the Complaint as though set forth fully here at length.

22. Defendants have breached the Production Agreement and the Publishing Agreement by not accounting nor paying Bey for the exploitation of the Works, i.e. his producer and/or publishing royalties owed for recordings and compositions created by Bey listed above in Par. 19.

23. Absent a full accounting by Defendants, Plaintiff is not presently aware of the exact amounts of damages resulting from Defendants' breaches, however, the sums of money are substantial and exceed \$500,000.

24. Plaintiff has performed all of his obligations under both the Production Agreement and the Publishing Agreement.

25. As a proximate result of Defendants' breaches, Plaintiff has been damaged in an amount that is believed to be in excess of the \$500,000 minimum jurisdiction of the Commercial Division of this Court.

SECOND CAUSE OF ACTION

Conversion

26. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as though set forth fully here at length.

27. Under the Production Agreement and the Publishing Agreement, Defendants owe a duty to Plaintiff to account to and pay him his royalties, for work created by the Plaintiff and which sums of money are contractually Plaintiff's property.

28. Defendants are wrongfully and intentionally depriving Plaintiff of his property.

29. Upon information and belief Defendants have diverted away from Plaintiff and given to themselves, Plaintiff's property right to royalties for co-writing and producing the many recordings that are the subject of this lawsuit.

30. Every time that Defendants receive and continue to receive royalties from Record Companies, Publishing Companies, and other income sources (which include Plaintiff's royalties) and

Defendants did not contact Plaintiff and account and pay over to Plaintiff his royalties, Defendants committed repeated acts of Conversion, the equivalent of theft.

31. Defendants “serial” acts of conversion are oppressive, fraudulent, committed with malice and in conscious disregard of Plaintiffs rights, causing him to suffer consequential damages in excess of the \$500,000 minimum jurisdiction of the Commercial Division of this Court.

32. Plaintiff is also entitled to punitive damages.

THIRD CAUSE OF ACTION

Unjust Enrichment

33. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as though set forth fully here at length.

34. In doing the wrongful acts alleged, Defendants have been and are unjustly enriched to the detriment and loss of Plaintiff, including but not limited to, diverting to themselves and away from Plaintiff, Plaintiff’s compensation for his work.

35. As a direct and proximate result of Defendants’ unjust enrichment as alleged herein, Plaintiff is entitled to restoration and disgorgement from Defendants of all income wrongfully diverted from Plaintiff, including but not limited to, all gains that Defendants have realized from collecting and keeping Plaintiff’s royalties.

36. Defendants’ acts of unjust enrichment (profiting and benefiting at the Plaintiff’s expense) are oppressive, fraudulent, committed with malice and in conscious disregard of Plaintiffs rights, causing him to suffer consequential in excess of the \$500,000 minimum jurisdiction of the Commercial Division of this Court.

37. Plaintiff is also entitled to punitive damages.

FOURTH CAUSE OF ACTION

Accounting

38. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as though set forth fully here at length.

39. A fiduciary or other trust relationship exists between Bey on the one hand and Defendants on the other hand for which an accounting of Defendants' books and records is appropriate to the extent necessary to trace the royalties and other monies due and owed to Plaintiff as described above.

40. Defendants' also have duties under the respective contracts with Plaintiff which obligates the Defendants to disclose all financial information material to Plaintiff's royalty entitlement.

41. Defendants' failure to provide accountings to Plaintiff is a direct and material breach of both the Production and Publishing Agreements.

42. In the absence of an accounting of Defendants' books and records under both Agreements as well as the books and records of Defendants' distributors, assignees, agents and licensee's (hereafter collectively "Defendants' Licensees"), Bey cannot know the precise amount of monies received by by Defendants (in the form of either advances or royalties) earned from the exploitation of the Works in question.

43. To the extent that Defendants' Licensees are with established music companies or that the Works are either distributed by a so-called "Major Record Label" or administered by a "Major Publishing Company, both established companies and "Majors" customarily keep detailed statements of transactions as a matter of proper business practices.

44. These detailed statements of transactions maintained by established companies and Majors are similar to general ledgers in that they reflect revenues generated from various sources.

45. These detailed statements of transactions are kept current and in a reasonable permanent form and manner and go back to the the very first sale or the exploitation of the Works until present and are “open” in that Defendant’s Licensees are continually exploiting the Works in ways including but not limited to Album sales, digital downloads, ringtones, but also “streaming” and other advertising and revenue generating broadcast and commercial performances.

46. As a result of the foregoing, there are present and future transactions arising from the commercial exploitation of the Works, which will produce royalty income to the Plaintiff, and the right to an accounting from Defendants and Defendants’ Licensees and agents should therefore be ordered by this Court to prevent further injury to the Plaintiff.

47. In the absence of a Court ordering an accounting from Defendants and Defendants’ Licensees and agents, Plaintiff will continue to suffer consequential damages in excess of the \$500,000 minimum jurisdiction of the Commercial Division of this Court.

FIFTH CAUSE OF ACTION

Declaratory Judgment

48. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as though set forth fully here at length.

49. Defendants are legally obligated under the Production Agreement and the Publishing Agreement to account directly to the Plaintiff and/or to cause their Licensees and agents to account directly to Plaintiff on Defendants’ behalf.

50. Because Defendant’s Licensees are beneficiaries, fiduciaries, royalty collectors, managers, and custodians, they should also be compelled to provide Plaintiff with detailed accountings.

51. Because of Defendant's material breaches of the Agreements and their failure to cure same, the Agreements shall be declared terminated and the ownership of the Works shall revert to the Plaintiff.

SIXTH CAUSE OF ACTION

Constructive Trust

52. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of the Complaint as though set forth fully here at length.

53. Defendants and Defendants' Licensees and agents have received royalties due and owned by Plaintiff and they have a fiduciary duty to preserve and account for those monies.

54. Plaintiff requests that this Court impose a constructive trust upon Defendant's assets in a sum equivalent to all such royalties and monies withheld by the Defendants and due and owed to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. An Order compelling Defendants and Defendants' Licensees and agents to provide Plaintiff with an immediate detailed and accurate accounting;
2. A judgment against Defendants in an amount to be proven at trial but in excess of \$500,000 against Defendants for compensatory and punitive damages together with interest and costs;
3. A Judgment against Defendants for reasonable attorneys' fees;
4. A Declaratory Judgment construing the operative contracts and declaring Plaintiff's rights against the Defendants and Defendant's Licensees and agents in conformity with the Complaint;

5. An Order and Judgment imposing an equitable lien and constructive trust against Defendant's in an amount commensurate with those sums Defendants owe to Plaintiff; and
6. Such other and further relief as this Court may deem just and proper under the circumstances.

Dated: March 21, 2018

/SS/ Kevon Glickman
Kevon Glickman, Esq.
Kevon Glickman Law LLC
30 Wall Street, 8th Floor
New York, New York 10005
kevon@kevonglickman.com

/SS/ Paul W. Verner
Paul W. Verner, Esq.
Verner Simon
30 Wall Street, 8th Floor
New York, New York 10005
pwverner@vernerlaw.com

*Attorneys for Plaintiff, Selwyn Bougard,
now known as El-Divine Amir Bey and p/k/a
"4th Disciple"*

VERIFICATION

I, El-Divine Amir Bey, , being duly sworn, deposes and says:

I am plaintiff herein. I have read the foregoing Verified Complaint, know the contents thereof and believe the same to be true, except as to the matters alleged upon information and belief, and as to those matters, I believe them to be true.

By: *El-Divine Amir Bey*
El-Divine Amir Bey

Allegheny County, PA
Sworn to before me this 4
day of ~~March~~, 2018
APRIL

JL Maggs
Notary Public

