

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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GREGORY MASCARO,

Index No. _____

Plaintiff,

SUMMONS

- against -

Plaintiff designates Bronx County as
the place of trial.

NEW YORK YANKEES PARTNERSHIP,

The basis of venue is defendant's
residence in Bronx County

Defendant.

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To the above-named defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on plaintiffs' attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York), and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
September 13, 2018

DAVIDOFF HUTCHER & CITRON LLP

By: _____

Larry Hutcher
Richard Wolter

605 Third Avenue
New York, New York 10158
(212) 557-7200
Attorneys for Plaintiffs

TO:
New York Yankees Partnership
ATTN: Lon A. Trost
Yankees Stadium
Bronx, New York 10451

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

GREGORY MASCARO,

Index No. _____

Plaintiff,

- against -

COMPLAINT

NEW YORK YANKEES PARTNERSHIP,

Defendant.

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Plaintiff Gregory Mascaro (“Plaintiff” or “Mascaro”), by and through his attorneys, Davidoff Hutcher & Citron LLP, by way of his complaint against defendant NEW YORK YANKEES PARTNERSHIP (the “Yankees” or “Defendant”), alleges and states as follows:

PRELIMINARY STATEMENT

1. As the playoffs approach and with their hopes of a championship season still alive, the Yankees continue their wrongful and illegal war against ticket resellers.

2. However, in the Yankees’ fervor to shut down ticket resellers and deprive them of their inventory, Plaintiff appears to have gotten caught in the cross-fire.

3. Plaintiff is not a ticket reseller -- he is a full-time stock broker who purchased nine Yankees season tickets earlier this year (the “Season Tickets”) to entertain current and prospective clients and for personal use.

4. Without any basis whatsoever, the Yankees have arbitrarily branded Plaintiff a “straw man” for an unnamed “unlicensed ticket broker” and revoked his Season Tickets.

5. In February of this year, after numerous telephone conversations and e-mail exchanges with a Yankees representative, Plaintiff and the Yankees came to an agreement regarding the purchase of the Season Tickets.

6. Plaintiff purchased the Season Tickets from the Yankees and paid a total of \$134,662.50 which constituted payment in full of the first year of the 10-year term promised by the Yankees.

7. After accepting payment from Plaintiff and despite Plaintiff having otherwise complied with all the terms of the Yankees' offer, the Yankees suddenly reversed course and refused to issue the Season Tickets to Plaintiff.

8. After ignoring Plaintiff's repeated requests for an explanation, the Yankees ultimately informed Plaintiff that the Yankees believed that Plaintiff was being used as a "straw man" by an unlicensed ticket broker to purchase the Season Tickets.

9. The Yankees' proffered explanation for revoking the Season Tickets has no basis in fact and is little more than a cynical attempt by the Yankees to hoard tickets for themselves and charge artificially inflated prices to the detriment of Plaintiff and the public at large.

10. Indeed, in response to the Yankees' purported concerns, Plaintiff offered to guarantee to the Yankees that, to the extent Plaintiff could not use any of the tickets and sought to resell them, Plaintiff would do so only through a licensed ticket broker.

11. This did not satisfy the Yankees necessitating the instant action to enforce Plaintiff's binding agreement with the Yankees.

THE PARTIES

12. Plaintiff Gregory Mascaro is an individual residing in Ronkonkoma, New York.

13. Upon information and belief, the Yankees are an Ohio partnership located at

Yankee Stadium, Bronx, New York.

JURISDICTION/VENUE

14. This Court has personal jurisdiction over the Yankees pursuant to CPLR 301 since they reside within the State of New York.

15. Venue is proper in New York County pursuant to CPLR 503(a) since the Yankees reside within Bronx County.

FACTUAL ALLEGATIONS

Background

16. In February 2018, Plaintiff reached out to the Yankees via telephone about purchasing season tickets.

17. Plaintiff spoke with a Yankees representative named Matt Hansen about the various options and seats that were available.

18. After a few more telephone conversations and e-mail exchanges, an agreement was reached on or about February 22, 2018.

19. Plaintiff agreed to purchase, and the Yankees agreed to sell, 9 season tickets (Section 121A, Row 7, Seats 5-13) to Plaintiff for a 10-year term.

20. The Yankees issued an invoice to Plaintiff (with the ticket price calculated based on a 10-year term) and requested that payment for the 2018 season be made in full by February 26, 2018.

21. Payment in full was made by wire transfer to the Yankees on February 23, 2018.

22. Plaintiff otherwise complied with the terms & conditions attached to the invoice.

23. As such, the parties had reached and consummated an enforceable agreement.

24. Accordingly, Plaintiff understood that the Season Tickets would be issued to him shortly thereafter in accordance with the parties' agreement.

25. Without any further communication from the Yankees, the Yankees returned Plaintiff's money on March 2, 2018 (without issuing any tickets).

26. Thereafter, the Yankees refused to respond to Plaintiff's repeated requests for an explanation.

27. The Yankees ultimately informed Plaintiff that they believed Plaintiff was a "straw man" and that the Season Tickets were being purchased for the ultimate benefit of an unlicensed ticket broker.

28. Plaintiff explained to the Yankees that he is a stock broker who intends to use the tickets to entertain clients and for personal use.

29. Plaintiff further offered to use only a licensed ticket broker in the event that he could not use and sought to resell any of the Season Tickets.

30. Nevertheless, the Yankees have refused to reconsider their position and remain in willful breach of the parties' agreement.

31. It appears that, in their eagerness to identify ticket brokers and deprive them of inventory, the Yankees have arbitrarily targeted Plaintiff and revoked his Season Tickets.

32. Regardless of their actual reason or proffered excuses, the Yankees' conduct constitutes an unjustified breach of the parties' agreement.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

33. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 32 hereof as if set forth in full herein.

34. Plaintiff purchased and paid in full for each of the Season Tickets for the 2018 season in February 2018, which was the first year of a promised 10-year term.

35. The Yankees accepted payment in full for each of the 2018 Season Tickets, which

payment also served as a down payment towards the promised 10-year term.

36. Plaintiff otherwise complied with the terms and conditions that the Yankees attached to the sale and Plaintiff otherwise fulfilled all of his obligations thereunder.

37. The Yankees refused to issue the Season Tickets in accordance with the parties' agreement.

38. By refusing to issue the Season Tickets in accordance with the parties' agreement, the Yankees breached the parties' agreement without justification.

39. Given the unique nature of the Season Tickets, Plaintiff is entitled to specific performance as well as money damages in an amount to be determined at trial but in no event less than \$1,000,000.00.

AS AND FOR A FIRST CAUSE OF ACTION
(Violation of Arts & Cultural Law § 25.30(1)(a))

40. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 39 hereof as if set forth in full herein.

41. The Yankees' revocation of the Season Tickets based solely on the possibility of their resale is arbitrary and capricious and violates New York's Arts and Cultural Law's express prohibition on "restricting . . . the resale of tickets included in a subscription or season ticket package as a condition of purchase [and] as a condition to retain such tickets for the duration of the subscription or season ticket package agreement." ACAL § 25.30(1)(a).

42. Accordingly, Plaintiff is entitled to injunctive relief compelling reinstatement of the Season Tickets for the promised 10-year term and monetary damages pursuant to ACAL § 25.33.

43. Plaintiff is also entitled to recover attorneys' fees pursuant to ACAL § 25.33.

AS AND FOR A THIRD CAUSE OF ACTION

(Injunction)

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 43 hereof as if set forth in full herein.

45. It is essential that injunctive relief be granted compelling reinstatement of the Season Tickets for the promised 10-year term.

46. The Yankees' revocation of the Season Tickets simply because Plaintiff may resell some of them (through a licensed ticket broker!) violates the ACAL, which violation warrants injunctive relief as a matter of law.

47. The granting of injunctive relief would impose no hardship on the Yankees because it would merely require the Yankees to honor the terms of their bargain with Plaintiff and otherwise abide by the statutory mandates of the ACAL.

48. Given the public interests at stake, ACAL § 25.33 expressly confers a private right of action for injunctive and monetary relief for violations thereof.

49. Plaintiff has no adequate remedy at law.

50. Plaintiff is also entitled to recover reasonable attorneys' fees pursuant to ACAL § 25.33.

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor as follows:

(a) On the first cause of action compelling specific performance of the parties' agreement and awarding monetary damages in an amount to be determined at trial but in no event less than \$1,000,000.00

(b) On the second cause of action declaring the Yankees' conduct to be in violation of ACAL § 25.30 and awarding injunctive relief compelling reinstatement of the Season Tickets for

the promised 10-year term, money damages in an amount to be determined at trial but in no event less than \$1,000,000.00, and reasonable attorneys' fees;

(c) On the third cause of action awarding injunctive relief compelling reinstatement of the Season Tickets for the promised 10-year term and reasonable attorneys' fees; and

Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 13, 2018

DAVIDOFF HUTCHER & CHIRON LLP

By: 

Larry Hutcher
Richard Wolter

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New York, New York 10158
(212) 557-7200
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