

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

FRAT STAR MOVIE, LLC,

Plaintiff,

-against-

ELLIOT TEBELE and FJERRY LLC,

Defendants.

Index No.: _____

Date Filed: _____

SUMMONS

Plaintiff designates New York
County as the place of trial

Basis of Venue:

Residence of Defendants Elliot
Tebele and FJerry LLC

TO the above named Defendants:

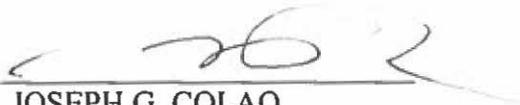
**Elliot Tebele
300 W. 12th St., #4G,
New York, New York 10014**

**FJerry LLC
112 Bowery, 4th Floor,
New York, New York 10013**

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 the plaintiff's attorney 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. 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
March 22, 2017

LEADER & BERKON LLP

By: 

JOSEPH G. COLAO
THOMAS K. RICHARDS
630 Third Avenue, 17th Fl.
New York, NY 10017
(212) 486-2400
*Attorneys for Plaintiff Frat Star
Movie LLC.*

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

FRAT STAR MOVIE, LLC,

Plaintiff,

Index No.:

-against-

COMPLAINT

ELLIOT TEBELE and FJERRY LLC,

Defendants.

Plaintiff Frat Star Movie, LLC (“Plaintiff” or “Company”), by the Plaintiff’s attorneys Leader & Berkon LLP, alleges as follows:

NATURE OF ACTION

1. This is an action for breach of contract arising from the failure of Defendants Elliot Tebele (“Tebele”) and FJerry LLC (“FJerry”) to perform their contractual obligations under a certain Deal Memorandum entered into between Tebele and the Company on or around October 30, 2015 (the “Agreement”). A true copy of the Agreement is attached hereto and made a part hereof as Exhibit 1.

2. Pursuant to the Agreement, Tebele agreed to render services as an executive producer in connection with a feature motion picture entitled “Frat Star” (the “Motion Picture”), produced by the Company. Tebele and FJerry hold themselves out as “social media influencers” and control several social media accounts, including an Instagram® account under

the handle @fuckjerry, as well as Facebook[®], Snapchat[®] and Twitter[®] accounts. Upon information and belief, @fuckjerry currently has in excess of eleven (11) million followers.

3. Under the Agreement, Tebele was obligated to collaborate with the Company to develop and execute a marketing and promotional strategy for the Motion Picture. *See* Exh. 1, Section 1.b.

4. Tebele agreed to make a minimum of six (6) social media posts and to promote and support the Motion Picture. *See* Exh. 1, Section 1.a. Tebele also agreed to execute these posts in a “first class, professional manner to the best of Tebele’s ability” (*See* Exh. 1, Section 1.e.) and to make his work for Plaintiff his “first priority.” *See* Exh. 1, Section 7.

5. In negotiating the Agreement, Tebele demanded, and pursuant to the Agreement, was paid the sum of \$10,000. In addition, Tebele requested to have a role in the Motion Picture. Although Tebele had no previous acting credits, Plaintiff granted his request and wrote in a role for Tebele. Tebele also asked for executive producer credits for himself and his business manager, Elie Ballas (“Ballas”). This request, too, Plaintiff granted.

6. Plaintiff has fulfilled all of its obligations to Defendants.

7. Defendants breached their obligations to the Company under the Agreement. Defendants did not appropriately collaborate with Plaintiff on a marketing and promotional strategy, did not promote and support the Motion Picture, did not timely perform at least six (6) social media posts in a “first class, professional manner to the best of Tebele’s ability,” and did not treat their collaboration with Plaintiff and the making of the required social media promotional posts as Tebele’s first priority.

8. In an attempt to salvage some value from the Agreement in the crucial period before and during the launch of the Motion Picture, the Company contacted Tebele and Ballas several times, suggesting ways in which Defendants could cure their breach. Defendants refused.

9. Defendants' breaches of the Agreement and refusal to perform thereunder have caused Plaintiff to suffer substantial damages.

THE PARTIES

10. Plaintiff Frat Star Movie, LLC is a New York Limited Liability Company.

11. Upon information and belief, Defendant FJerry, LLC is a Delaware Limited Liability Company located at 300 W. 12th St., #4G, New York, New York 10014, with its principal office located at 112 Bowery, 4th Floor, New York, New York 10013.

12. Upon information and belief, Defendant Elliot Tebele resides in New York, New York.

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over Defendants pursuant to CPLR §§ 301 and 302.

14. Venue is proper in this county pursuant to CPLR § 503.

BACKGROUND

15. The Motion Picture is a feature-length dark comedy portraying life in a fictional fraternity.

16. In deciding upon a marketing strategy for the Motion Picture, Plaintiff determined that the potential audience included followers of Defendants' social media accounts.

17. In August 2015, Plaintiff began discussions with Tebele and Ballas regarding a possible agreement wherein Tebele and his company FJerry would promote the Motion Picture using their social media accounts.

18. As part of those discussions, Tebele and Ballas stated that, in addition to a monetary fee for making social media posts promoting the Motion Picture, both Tebele and Ballas wanted executive producer credits and that Tebele wanted to appear in the Motion Picture.

19. On or around October 15, 2015, Plaintiff forwarded the Agreement to Tebele and Ballas.

20. On October 30, 2015, Ballas forwarded the Agreement to Plaintiff, with the signature line for Tebele filled in.

21. The Agreement was fully executed on October 30, 2015.

The Agreement

22. In the Agreement, Tebele agreed, among other things, "to render services as an EXECUTIVE PRODUCER. Tebele shall render all services generally performed by an

executive producer as may be reasonably required by the Production Company [*i.e.*, Plaintiff] in connection with the Motion Picture (the “Services”). Exh. 1, Section 1.

23. The Agreement further provides that Tebele will “promote and support the Motion Picture on his established social media accounts owned by FJERRY LLC.” Exh. 1, Section 1.a.

24. The Agreement further provides that “during the promotion campaign leading up to, and immediately following, the initial release of the Motion Picture” Tebele will “post a minimum of six (6) posts of promotional content such as videos and photographs on FJERRY LLC feeds.” Exh. 1., Section 1.a.

25. The Agreement further provides: “Tebele will collaborate with Production Company, Hunter Ryan (“Ryan”) and Grant S. Johnson (“Johnson”) in developing and executing a marketing strategy for the Motion Picture.” Exh. 1, Section 1.b.

26. Ryan and Johnson are the producers of the Motion Picture. Johnson is also the President of the Company.

27. The Agreement further provides: “Tebele shall perform all of the above in a first class, professional manner to the best of Tebele’s ability.” Exh. 1, Section 1.e.

28. The Agreement further provides that the services provided by Tebele to the Company and in relation to the Motion Picture “will be Tebele’s first priority and that any services that Tebele may render for third parties or on Tebele’s own account shall not materially interfere with the timely performance of Tebele’s Services and obligations with respect to the Motion Picture hereunder.” Exh. 1, Section 7.

29. The Agreement further provides that it is to be “construed in accordance with the laws of the State of New York, the courts of which shall have the exclusive jurisdiction and venue for the resolution of disputes,” and that the Agreement will “constitute a binding contract between Production Company [*i.e.*, Plaintiff] and Tebele, and constitutes the entire agreement between the parties hereto on the subject matter hereof and supersedes and replaces all prior and contemporaneous oral or written agreements and understandings pertaining to the subject matter hereof.” Exh. 1., Section 21.

Tebele’s Breaches of the Agreement

30. After the Agreement was executed in October 2015 and the Motion Picture was finished, the Company acquired distributors for the Motion Picture and ultimately secured a release date of January 3, 2017 (the “Release Date”) for the Motion Picture on many “Transactional IVOD” platforms including: iTunes[®], Google Play[®], YouTube[®], Vudu[®], and Amazon[®], and an array of VOD platforms: AT&T U-verse[®], Dish Network[®], Verizon Fios[®], DirecTV[®] and other platforms.

31. With the Release Date set, Plaintiff in early December 2016 repeatedly attempted to contact Tebele and Ballas by telephone in order to begin collaborating on the marketing and promotion strategy for the Motion Picture, and in particular to collaborate on the social media posts that would be made on the FJerry social media accounts.

32. Neither Tebele nor Ballas responded.

33. On December 22, Plaintiff, per Johnson, emailed Tebele and Ballas, and requested that they begin working on the promotional social media posts for the Motion Picture, given that the Release Date was now only weeks away.

34. That email included six (6) proposed social media posts to be used on the FJerry Instagram[®] account known as @fuckjerry, which, upon information and belief, had at that time in excess of ten (10) million followers.

35. The email further stated:

Below are six proposed posts for FuckJerry. Posting them immediately, in a smart marketing fashion, is of the utmost importance and urgency to helping *Frat Star* succeed, so we need to chat about your thoughts on these, exact dates and times of when to post, and then post them. You can understand that with all college students being home (without homework) for the holiday, that now is an amazing time to ramp up the *Frat Star* marketing. I advise that post #1 be posted tomorrow at the time in which you and your colleagues have decided is the most-traffic based on Instagram. [emphasis added]

36. Tebele neither cooperated with Plaintiff, nor posted any posts.

37. Instead, Ballas sent an email on December 26, suggesting that Tebele and FJerry make a post on the Release Date using the Instagram[®] Story method (a new Instagram[®] feature that utilizes continuous videos), which would include a video on-camera appearance by Tebele with Tebele mentioning the fact that he was an actor and executive producer in the Motion Picture.

38. Plaintiff agreed and, per Johnson, repeatedly attempted to contact Tebele and Ballas to collaborate on that first post, as called for in the Agreement. At no time between December 26 and the Release Date did Tebele or Ballas respond to Plaintiff's requests. Instead, during that interval, Defendants made social media posts promoting other motion pictures and products. On the Release Date, Ballas told Johnson that Tebele was in London and too busy with other matters to speak or collaborate with Plaintiff.

39. Defendants thus failed and refused to make their work for Plaintiff their first priority, as they were obligated to under the Agreement.

40. On the Release Date, without collaboration with Plaintiff, Defendants released an Instagram[®] Story which was not produced in a first class, professional manner. Among other things: the post misspelled the name of the Motion Picture, included a blurred and unflattering version of a video clip from the Motion Picture, and, contrary to Ballas' representation on December 26, did not include any kind of on-camera personal appearance by Tebele.

41. On January 6, Plaintiff, per Johnson, attempted to contact Tebele and Ballas requesting that they collaborate on the second of the six (6) required social media posts. Tebele responded that he "found [it] hard to believe" that he had agreed with Plaintiff to do six (6) posts and that because "we currently charge \$25k for a swipe up story," he would do only one more post. On January 11, Tebele stated that he was now charging "\$30k-\$40k for a post."

42. Plaintiff, per Johnson, responded on January 7 to Tebele's January 6 email:

Hi Elliot,

This will not be your final promotion. We paid you, gave you a role in the film, 3% of the Producer's Net Receipts, and an EP credit in exchange for minimum 6 posts and minimum 2 public appearances. I would not have given you those things in exchange for just 2 posts. This Facebook post will be your 2nd post, with more to come.

* * * * *

Please let me know what you have in mind for this post, which should be done Jan. 12 or Jan. 13 around 7pm EST. Thank you.

43. On January 7, further to his January 6 comment that he “found it hard to believe” that he had agreed to do six posts for \$10,000 when he was now charging a multiple of that amount for each post issued on behalf of other companies, Tebele emailed Plaintiff asking for a copy of the Agreement. Less than an hour later, having not yet received it, Tebele, without collaboration with Plaintiff, issued several social media posts, each of which failed utterly to satisfy the requirements of the Agreement.

44. By failing and refusing to satisfy their obligations under the Agreement, Defendants substantially damaged the Company and its marketing of the Motion Picture.

AS AND FOR PLAINTIFF’S CAUSE OF ACTION

(For Breach of the Agreement)

45. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 44 hereof as if fully set forth herein.

46. Defendants breached their obligations under the Agreement, set forth in Paragraphs 22-24 and 27-28 above.

47. As Defendants well knew, their breaches of the Agreement, as aforesaid, occurred during the critical time period leading up to and immediately after the Release Date, thus causing the Company substantial harm.

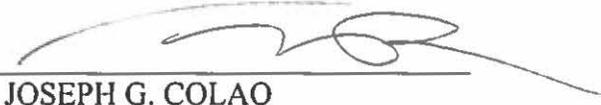
48. As a result of Defendants’ breaches of the Agreement, the Company has been damaged in an amount to be determined at trial, amounting to not less than \$250,000, together with interest, costs, and fees.

WHEREFORE, plaintiff Frat Star Movie, LLC, respectfully requests that this Court enter Judgment in its favor and against defendants Elliot Tebele and FJerry, LLC as follows:

- (a) Awarding Frat Star Movie, LLC monetary damages in an amount to be determined at trial, but not less than \$250,000 together with prejudgment interest pursuant to CPLR § 5001;
- (b) Awarding Frat Star Movie, LLC all costs, disbursements and expenses, including reasonable attorney's fees; and
- (c) Awarding Frat Star Movie, LLC such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 22, 2017

LEADER & BERKON LLP

By: 

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