

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

GIBSON BRANDS, INC., and NEAT)
AUDIO ACQUISITION CORP.,)

Plaintiffs,)

VS.)

NEAT AUDIO, INC., MARTIN WOLF,)
BERNARD WIDE, MARTINS)
SAULESPURENS and KEN NILES,)

Defendants.)

NE
NO. 15-1115-BC

FILED
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**ORDER: (1) STATING TOPICS FOR DISCUSSION AT
CASE LITIGATION PLAN CONFERENCE AND
(2) SETTING 1/29/16 DEADLINE FOR
NOTICE OF AVAILABILITY OF COUNSEL**

Lawsuit Overview

This lawsuit was filed by a Purchaser, Neat Audio Acquisition Corp., and its subsidiary owner, Gibson Brands, Inc. to recover \$9.1 million of compensatory damages and alleging punitive and/or treble damages for fraud and fraudulent inducement; negligent misrepresentation; consumer protection violations; breach of contract; and/or unjust enrichment in connection with the asset purchase of Neat Audio, Inc. and related payments to Neat Shareholders. The Defendants deny Plaintiffs' allegations and claims; have asserted several affirmative defenses to the Complaint such as release, waiver, estoppel, acquiescence

and statute of limitations; and have counterclaimed to recover \$2.9 million in compensatory damages, and attorneys fees.

Issues Joined

The parties have joined issue in this case with the January 4, 2016 filing of Plaintiffs' Reply to Defendants' Counterclaim. The Court has studied the record: Complaint, the sealed Answer and Counterclaim and Exhibits, particularly the Asset Purchase Agreement, and Separation Agreement and Release of Claims, and the Reply to Counterclaim preparatory to meeting with Counsel to prepare a case litigation plan for this case.

Conference Topics

Pursuant to the authority provided in Tennessee Civil Procedure Rule 16.02, the Court shall convene a case litigation plan Conference.

In addition to discussion of the standard litigation events and deadlines: amendment of pleadings, need to add parties, efficient sequencing and methods of obtaining discovery and discovery deadlines, mediation, and trial date, the Court requests Counsel to be prepared to address at the Conference whether in their view there are pure questions of law which can be decided preliminarily to eliminate or narrow the scope of the litigation and/or to aid early mediation.

Pure Questions of Law?

In particular, the Court will inquire of Defendants' Counsel whether it is their plan, with respect to the Third Defense to the Complaint of the release in the Separation Agreement, and the Sixth Defense of Statute of Limitations, to file a motion to dismiss, or are facts outside the record needed to process these defenses by summary judgment or trial.

Fraud Is Fact Intensive; Potential Trial Dates

One reason the Court will make the foregoing inquiries at the Conference is that there is Tennessee case law that deciding issues of fraud, whether asserted as a claim for recovery, as appears in the Complaint in this case, or as a defense to breach of contract, as has been asserted by Plaintiffs in Reply to Defendants' breach of contract Counterclaim, is fact-intensive. The result is that customarily at least, in part, fraud cases cannot be decided upon dispositive motions and must be tried. For this reason, at the Conference, the Court will assign the case a trial date. That trial setting will be a firm setting, so in advance of the Conference, Counsel should study their schedules, their client's schedules, and evaluate the time needed to prepare the case for trial. The Court is considering a 5-day trial beginning November 1, 2016, or beginning November 28, 2016.

Pleading With Specificity

As to Defendants' Fourth Defense of failure to plead with particularity, prior to the conference the Court will set a deadline for Defendants' Counsel to file a list of paragraphs and Counts in the Complaint which Defendants contend are not pled with sufficient

specificity to enable the Court to better gauge the timing of deadlines to amend pleadings. The Court has already observed that paragraph 13 of the Complaint provides concrete examples, and the Court will inquire of the Defendants why paragraph 13 does not provide sufficient specificity.

Source of Equitable Defenses


To aid in gauging discovery, the Court will inquire of Defendants whether their equitable defenses of waiver, estoppel and acquiescence derive from facts related to the release in the Separation Agreement or derive from other sources.

Availability of Counsel

It is therefore ORDERED that on or before January 29, 2016, Counsel shall contact the Docket Clerk, Mrs. Smith, at 615-862-5719, to provide their availability for a Case Litigation Plan Conference on these dates:

February 10, 2016 at 1:30 p.m.
February 12, 2016 at noon
February 16, 2016 at 1:30 p.m.
February 19, 2016 at 9:30 a.m.

The parties are welcome but are not required to attend the Conference.



ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Timothy Harvey
W. Scott Sims
D. Gilbert Schuette
Scott L. Levitt



MAILED
1/21/10