

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 11-cv-_____

GEORGE T. HAWES, an individual,

Plaintiff,

v.

MADISON AVE. MEDIA, INC.,
a Delaware corporation,

Defendant.

_____ /

COMPLAINT

Plaintiff, GEORGE T. HAWES sues Defendant, MADISON AVE. MEDIA, INC. and alleges:

PARTIES

1. GEORGE T. HAWES (“Hawes”) is an individual residing in, and a citizen of, New York.
2. Defendant, MADISON AVE. MEDIA, INC. (“MAM”) is a Delaware corporation with its principal place of business in Boca Raton, Florida.

JURISDICTION AND VENUE

3. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, in that the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs, and that the citizenship of Hawes is diverse from the citizenship of MAM as alleged in paragraphs 1 and 2, *supra*.

4. The Court may exercise jurisdiction over MAM in that its principal place of business is in Florida.

5. Venue is properly laid in this District pursuant to 28 U.S.C. §1391(a) because a substantial part of the events or omissions giving rise to this claim occurred in this District, and under 28 U.S.C §1391(c), MAM resides in this District.

FACTUAL BACKGROUND

6. On or around February 18, 2011, MAM executed a Convertible Promissory Note in consideration for Hawes' loan of \$500,000 to MAM ("First Note"). A copy of the First Note is attached hereto as Exhibit A and by this reference made a part hereof.

7. Under the First Note, MAM agreed to pay Hawes the unpaid principal amount due under the First Note, together with interest in an amount equal to 18% per annum on the unpaid principal balance, on or before February 17, 2012.

8. On or around February 18, 2011, MAM executed a Security Agreement pledging certain collateral as security for the First Note as well as any other advances or loans made by Hawes to MAM ("First Security Agreement"). A copy of the First Security Agreement is attached hereto as Exhibit B and by this reference made a part hereof.

9. On or around July 29, 2011, MAM executed a Secured Convertible Promissory Note in consideration for Hawes' loan of an additional \$500,000 plus any additional amounts Hawes elected to loan to MAM ("Second Note"). A copy of the Second Note is attached hereto as Exhibit C and by this reference made a part hereof.

10. Under the Second Note, MAM agreed to pay Hawes the unpaid principal amount due under the Second Note, together with interest in an amount equal to 18% per annum on the unpaid principal balance, upon Hawes demand.

11. On or around July 29, 2011, MAM executed a Security Agreement pledging certain collateral as security for the Second Note (“Second Security Agreement”). A copy of the Second Security Agreement is attached hereto as Exhibit D and by this reference made a part hereof.

12. MAM has defaulted on its obligations under the terms of the First Note.

13. MAM’s default under the terms of the First Note entitle Hawes to accelerate the First Note.

14. Section 4.1(a) of the First Note provides that Hawes is entitled to accelerate the First Note if he determines that MAM is insolvent.

15. MAM is unable to pay the money it owes to Hawes under the First Note and Second Note.

16. MAM has been unable to meet its payroll obligations on an ongoing basis and has relied upon advances from Hawes to pay MAM’s employees.

17. MAM is unable to fund other expenditures necessary for the ongoing operation of MAM’s business without obtaining further advances from Hawes to make those expenditures.

18. MAM is insolvent, and under the terms of the First Note, MAM’s insolvency entitles Hawes to accelerate the First Note.

19. Section 4.1(h) of the First Note provides that Mr. Hawes is entitled to accelerate the First Note if he determines “that any material representation or warranty now or hereafter made by the Corporation to [Hawes] in any document instrument agreement or paper was not true or accurate when given.”

20. MAM made material representations and warranties at the time the First Note was executed and thereafter that have proven to be false when given.

21. Under Section 7.2 of the First Note, MAM was to disclose all of MAM's debt prior to the execution of the First Note.

22. Hawes has learned since the execution of the First Note that MAM failed to disclose a SBA loan ("SBA Loan") with a principal and interest balance of approximately \$25,000 incurred prior to the execution of the First Note.

23. MAM's failure to disclose the SBA Loan is a violation of its obligations under Section 4.1(h) of the First Note and entitles Hawes to accelerate the First Note.

24. Section 4.1(g) of the First Note provides that Hawes is entitled to accelerate the First Note if MAM has failed "to comply with any terms contained in the [First Security Agreement]."

25. MAM has failed to comply with the terms of the First Security Agreement.

26. Section 9(b) of the First Security Agreement states that MAM's failure to "comply with or perform any provision of" the First Note or First Security Agreement constitutes a default of the First Security Agreement.

27. MAM's failure to adhere to the terms of the First Note, as described above, constitutes a default under the First Security Agreement which entitles MAM to accelerate the First Note.

28. Section 3(p) of the First Security Agreement requires MAM to keep the collateral pledged as security for the First Note ("First Note Collateral") insured in such form and amounts as Hawes may reasonably designate against loss.

29. Hawes has demanded that MAM obtain \$400,000 of insurance against physical loss by fire or theft, \$2,000,000 of personal liability insurance, \$2,000,000 in products liability insurance, and \$2,000,000 in errors and omissions insurance, to protect the First Note Collateral.

30. MAM has failed to obtain any of the insurance listed above, which failure is a default under the First Security Agreement.

31. As described above, MAM failed to disclose the SBA Loan to Hawes prior to the execution of the First Security Agreement, which failure constitutes a default under Section 9(c) of the First Security Agreement.

32. MAM's defaults under the First Note and First Security Agreement entitle Hawes to demand payment in full of all amounts owed under the First Note.

33. As of September 1, 2011, MAM owed Hawes \$590,000 under the First Note.

34. On August 16, 2011, Hawes' counsel sent MAM a letter demanding payment of the full principal balance along with all interest owed under the First Note by September 1, 2011.

35. MAM has failed to pay Hawes any of the money owed under the First Note.

36. The Second Note is a Demand Note, and Hawes is entitled under its terms to call it due at his discretion upon 15 days notice to MAM.

37. On August 16, 2011, Hawes' counsel sent MAM a letter demanding payment in full of the full principal balance owed under the Second Note by September 1, 2011.

38. As of September 1, 2011, MAM owed Hawes \$781,022.97 under the terms of the Second Note.

39. MAM has failed to pay Hawes any of the money owed under the Second Note.

40. In addition to the terms of the Second Note that allow Hawes to call it due at his discretion, Hawes is entitled to demand payment in full of amounts due under the Second Note because of the occurrence of Events of Default specified in Section 4 of the Second Note.

41. Section 4(a) of the Second Note provides that Hawes is entitled to accelerate the Second Note if MAM is insolvent.

42. As described above, MAM is insolvent.
43. Section 4(j) of the Second Note provides that Hawes is entitled to accelerate the Second Note if MAM is in default of the First Note or First Security Agreement.
44. As described above, MAM is in default of both the First Note and First Security Agreement.
45. Section 4(g) of the Second Note provides that Hawes is entitled to accelerate the Second Note if MAM is in default of the Second Security Agreement.
46. MAM is in default of the Second Security Agreement.
47. Under Section 10(e) of the Second Security Agreement, MAM's inability to pay its monetary obligations as they become due constitutes a default of the Second Security Agreement.
48. MAM's inability to pay the amounts due under the First Note and Second Note, as described above, constitutes a default of the Second Security Agreement.
49. Further, MAM's inability to fund expenditures necessary for the ongoing operation of MAM's business, as described above, constitutes a default of the Second Security Agreement.
50. Under Section 10(k) of the Second Security Agreement, "the occurrence of any Event of Default, as such term is defined in any other Loan document, including, without limitation, any default in any agreement, obligation or instrument between" MAM and Hawes constitutes a default under the Second Security Agreement.
51. Each of the defaults under the First Note, the First Security Agreement, and the Second Note described above constitute independent defaults under the Second Security agreement.

TRANSACTIONAL FACTS

52. On February 18, 2011, MAM, as maker, executed and delivered the First Note to Hawes, as payee.

53. The First Note is a valid and enforceable contract between MAM and Hawes.

54. Hawes fully performed his contractual obligations under the First Note.

55. On February 18, 2011, MAM, executed and delivered the First Security Agreement to Hawes.

56. The First Security Agreement is a valid and enforceable contract between MAM and Hawes.

57. Hawes fully performed his contractual obligations under the First Security Agreement.

58. MAM breached its contractual obligations under the First Note by becoming insolvent.

59. MAM breached its contractual obligations under the First Note by failing to disclose the SBA Loan prior to the execution of the First Note.

60. MAM breached its contractual obligations under the First Note by failing to comply with the terms of the First Security Agreement.

61. MAM breached its contractual obligations under the First Security Agreement by failing to comply with the provisions of the First Note.

62. MAM breached its contractual obligations under the First Security Agreement by failing to insure the collateral pledged under that agreement as security for the First Note.

63. MAM breached its contractual obligations under the First Security Agreement by failing to disclose the SBA Loan prior to the execution of the First Security Agreement.

64. Under the terms of the First Note, MAM's breaches of its contractual obligations under the First Note and First Security Agreement entitle Hawes to demand immediate payment of all money owed under the First Note.

65. On August 16, 2011, Hawes demanded payment of all money owed under the First Note by September 1, 2011.

66. MAM has failed to pay Hawes any of the \$590,000 owed under the First Note.

67. On July 29, 2011, MAM, as maker, executed and delivered the Second Note to Hawes, as payee.

68. The Second Note is a valid and enforceable contract between MAM and Hawes.

69. Hawes fully performed his contractual obligations under the Second Note.

70. On July 29, 2011, MAM, executed and delivered the Second Security Agreement to Hawes.

71. The Second Security Agreement is a valid and enforceable contract between MAM and Hawes.

72. Hawes fully performed his contractual obligations under the Second Security Agreement.

73. MAM has breached its contractual obligations under the Second Note by becoming insolvent.

74. MAM has breached its contractual obligations under the Second Note by failing to comply with its contractual obligations under the First Note and First Security Agreement.

75. MAM has breached its contractual obligations under the Second Note by failing to comply with its contractual obligations under the Second Security Agreement.

76. MAM has breached its contractual obligations under the Second Security Agreement by becoming unable to pay its monetary obligations as they become due.

77. MAM has breached its contractual obligations under the Second Security Agreement by failing to comply with its contractual obligations under the First Note, the First Security Agreement, and the Second Note.

78. Under the terms of the Second Note, Hawes is entitled to demand payment of all amounts due under the Second Note upon 15 days notice to MAM.

79. MAM's breaches of its contractual obligations under the Second Note and Second Security Agreement further entitle Hawes to demand immediate payment of all money owed under the Second Note.

80. On August 16, 2011, Hawes demanded payment of all amounts due under the Second Note by September 1, 2011.

81. MAM has failed to pay any of \$781,022.97 due under the Second Note.

82. Hawes has been damaged by MAM's breach of its contractual obligations under the First Note, First Security Agreement, Second Note, and Second Security Agreement in an amount to be determined and no less than the \$1,371,022.97 MAM owes Hawes under the First Note and Second Note.

FIRST CLAIM FOR RELIEF
(Breach of Contract: First Note)

83. Hawes hereby incorporates herein paragraphs 1-82 of this Complaint by reference, as if fully set forth herein.

84. As hereinabove alleged, MAM breached its contractual obligations under the First Note and is liable to Hawes for the damages incurred by Hawes as a consequence of that breach.

85. As a result of MAM's breach of contract as aforesaid, Hawes is entitled to recover judgment against MAM for Hawes' actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

WHEREFORE, Plaintiff, Hawes respectfully requests the entry of a judgment against MAM for actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

SECOND CLAIM FOR RELIEF
(Breach of Contract: First Security Agreement)

86. Hawes hereby incorporates herein paragraphs 1-85 of this Complaint by reference, as if fully set forth herein.

87. As hereinabove alleged, MAM breached its contractual obligations under the First Security Agreement and is liable to Hawes for the damages incurred by Hawes as a consequence of that breach.

88. As a result of MAM's breach of contract as aforesaid, Hawes is entitled to recover judgment against MAM for Hawes' actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

WHEREFORE, Plaintiff, Hawes respectfully requests the entry of a judgment against MAM for actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

THIRD CLAIM FOR RELIEF
(Breach of Contract: Second Note)

89. Hawes hereby incorporates herein paragraphs 1-88 of this Complaint by reference, as if fully set forth herein.

90. As hereinabove alleged, MAM breached its contractual obligations under the Second Note and is liable to Hawes for the damages incurred by Hawes as a consequence of that breach.

91. As a result of MAM's breach of contract as aforesaid, Hawes is entitled to recover judgment against MAM for Hawes' actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

WHEREFORE, Plaintiff, Hawes respectfully requests the entry of a judgment against MAM for actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

FOURTH CLAIM FOR RELIEF
(Breach of Contract: Second Security Agreement)

92. Hawes hereby incorporates herein paragraphs 1-91 of this Complaint by reference, as if fully set forth herein.

93. As hereinabove alleged, MAM breached its contractual obligations under the Second Security Agreement and is liable to Hawes for the damages incurred by Hawes as a consequence of that breach.

94. As a result of MAM's breach of contract as aforesaid, Hawes is entitled to recover judgment against MAM for Hawes' actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

WHEREFORE, Plaintiff, Hawes respectfully requests the entry of a judgment against MAM for actual and consequential damages, interest, attorneys' fees, costs, and such other and further relief as may be just and equitable in the circumstances.

Dated: September 12, 2011.

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