UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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SIMPLY FIT OF NORTH AMERICA, INC. d/b/a
SIMPLY FIT OF THE NORTHEAST,

Plaintiff,

-against-

CORT L. POYNER, ROBERT L. COX,
ISHMAEL GONZALEZ, DANIEL MINAHAN,
SIMPLY FIT HOLDINGS GROUP, INC, and
SIMPLY FIT HOLDINGS, LLC.,

Defendants.

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DECLARATION
IN OPPOSITION TO
DISMISSAL MOTION

CV. 07-5402
(ADS)(ARL)

ANTHONY M. VITTORIOSO, declares the following under penalty of perjury pursuant to 28 U.S.C. section 1746:

1. I am counsel for Plaintiff in the above-captioned action. I make this Declaration in opposition to Defendants' motion seeking to dismiss claims in favor of arbitration and for failure to state a claim. I make this Declaration based on personal knowledge of the papers and proceeds had herein.

ARBITRATION

2. Defendants' motion is primarily concerned with either a dismissal or stay of the proceedings in favor of an arbitration clause. The arbitration clause is part and parcel of the fraud being committed herein by the

POYNER STOCK SCAM enterprise. The enterprise is in actuality a series of "stock plays" run in succession, where illicit gains are rolled-over from one to the other. As far as we can ascertain, monies derived by defendant POYNER from The Children's Internet, Inc. (CII), where he pre-sold shares that the company did not own and earned commissions, were used to finance defendant Simply Fit Holdings Group, Inc, (SFHG). See SEC v. The Children's Internet, Inc, et. al., C-06-6003 (N.D.Cal J. Wilken). Further, on information and belief, defendant POYNER separately defrauded Stock Communications Group (SCG) in matter involving the use of a shell company and used those funds to finance SFHG. See Stock Communications Group v. Poyner, CACE 07-034452 (Broward County 17th Jud. Cir. Fla.). These are matters outside the contractual relationship between Plaintiff and SFHG and are clearly beyond the contemplated scope and entirely out of place in an arbitration "arising out" of the contract between the parties. It is absurd to assert that any broad arbitration clause could contemplate this type of overarching securities fraud that predates the contract and which used the contract as an instrumentality. The arbitration clause uses "arising under" with "between the parties" and no other words to characterize its scope. The clause is narrow and does not reach claims such as RICO and fraud because they predate the contract and are overarching in nature.

3. Upon information and belief, the sole purpose of the arbitration clause was not to simplify dispute resolution, but rather to conceal the fraud being perpetrated. In other words, the illicitly gained funds from other stock frauds would be laundered and appear through third parties or nominees as capital for SFHG. The connection of the illicit funds to defendant POYNER was severed and not traceable because POYNER had no public role in SFHG.

4. Since Plaintiff's principals knew of POYNER and dealt with him directly on a number of occasions, they were the only non-SFHG persons who could link and provide damning evidence of POYNER's control of SFHG.

5. As such, there was a need to create a mechanism to silence Plaintiff after defendants finished defrauding Plaintiff- i.e., using their contract with plaintiff to raise public monies and build markets and establish contacts without ever intending to honor the contract or fulfill the representations used to induce the contractual relationship. The mechanism chosen for concealment of the fraud was the arbitration process: where there is no public record of the proceedings or evidence and the scrutiny of a judge with duties to the parties and to the public is avoided.

6. Plaintiff and SFHG executed not only a Master Distribution Agreement on July 13, 2007 (Exhibit B to Defendants' motion), but also an Amendment on August 31, 2007 (Exhibit C to Defendants' motion)and an Extension Agreement on August 8, 2008 (Exhibit D to Defendants' motion). Both the Amendment and the Extension Agreements do not mention or in anyway reference arbitration. The Amendment deals with an extension of the contract term, the establishment of minimums and milestones, a buyout provision, and the restructuring of unit pricing. The Extension deals with extending the territoriality of the exclusive license granted on a non-exclusive basis outside the exclusive territory. Indeed, the Extension Agreement expressly provides for jurisdiction in the Courts. The breach of the Extension Agreement is part and parcel of the breach of contract claim and each of the other claims.

7. Besides the arbitration clause itself being an instrumentality of the fraud in concealing the POYNER STOCK SCAM from the public, the entire agreement between Plaintiff and Defendant SFHG was permeated with fraud and never intended to be honored. As such, the arbitration clause falls when the contract falls due to fraud ab initio.

8. Indeed, even if the arbitration clause were valid and enforceable, there is no authority to compel arbitration with defendant POYNER because

he has no position or office with the contract signatory, SFHG. POYNER's fraudulent scheme extends beyond this contract into prior frauds and his use of SFHG as a vessel to launder ill-gotten gains. POYNER is not an officer or employee of SFHG, nor has he held himself out as such. On information and belief, POYNER is not a disclosed person in any public filings. Even if there were a basis for arbitration with SFHG and its officers, there is no basis for arbitration with POYNER.

SUFFICIENCY OF CLAIMS

9. Each of the six claims in the Complaint (Exhibit A to Defendants' motion) state a claim cognizable in law. Plaintiff has filed an Amended Complaint (annexed hereto as Exhibit 1), which is also sufficient in all aspects to properly and adequately state claims under law.

10. The RICO claims are attacked by defendants as deficient because they purportedly do not allege how each defendant participated in the enterprise denoted as the "Simply Fit Stock Scam Enterprise". Specific acts are alleged implicating each defendant in myriad misrepresentations relating to Plaintiff and other acts (including public filings of documents and misrepresentations to third parties). The Enterprise is clearly defined and the roles of each defendant are distinct and sufficiently pleaded, even if they do overlap to some extent.

11. The RICO claims are also attacked along with the fraud claim by defendants as deficient because they purportedly are not particularized. The time frame initially established in the Complaint indicates misrepresentations made prior to and after the contract was executed. To further clarify, the Amended Complaint (Exhibit 1) has narrowed down the dates and methods used to transmit the misrepresentations. Further, additional acts have been added. As such, although the facts and circumstances alleged in the Complaint certainly were clear and well-particularized enough to state RICO and fraud claims, the circumstances surrounding the fraud should be even clearer now after the Amended Complaint. The requisite fraud is easily inferred from all the facts alleged for the RICO and fraud claims.

12. Defendants further complain that the fraud and RICO acts alleged do not indicate how the representations were false. This argument fails to account for the fact that each representation alleged in paragraphs 23(a) through (h) and 28(a) through (s) are abjectly false. Each statement was an assertion of fact to be relied upon by Plaintiff in either executing the contract, making representations to third parties (to co-distribute, sub-distribute or retail the product), or in expending time, money and good will (through the use of contacts and otherwise) in promoting and marketing the

product. The statements by defendants were entirely false- essentially bold-faced lies- that defendants knew were false and entirely concocted to defraud plaintiff. What more does defendants' counsel want to establish scienter? Clearly, sufficient facts are alleged from which common law fraud under any applicable state law is established and a RICO claim based on such fraud clearly stated, as well. Please note, however, that the RICO claim contains more than misrepresentations made to Plaintiff and its officers. It is part of a larger scheme to launder ill-gotten gains obtained by securities fraud and use by the Plaintiff's contract and work, money and efforts to build markets and to raise money for SFHG. There are misrepresentations in public securities disclosures, as well as the use of threats and violence.

13. The contract claim in the Complaint states a claim for breach of contract. It indicates sufficient facts that indicate a contract, a breach by actions clearly adverse to the provisions and intent of the contract, as well as a breach of the covenant of good faith and clear industry standards with injuries proximately caused. For purposes of further clarity, the provisions of the contract are laid out in the Amended Complaint.

14. The tortious interference claim (the Fifth Count) has been amended to refer to defendant POYNER exclusively. POYNER is neither an officer, director nor other disclosed principal of SFHG. He has no

"immunity". His actions clear make out a claim for tortious interference. Although, I believe that there was a claim to be made against all parties on tortious interference, on consultation with my client it was decided that narrowing the claim to POYNER alone would be preferable.

15. I note that defendants have not moved against the unfair competition claim (Count 6).

16. Therefore, the motion seeking to compel arbitration or dismissal of the complaint should be denied as the matters are not arbitable and the facts and allegations made state claims under RICO and applicable state law.

WHEREFORE, Declarant respectfully requests that Defendants' motion be denied in its entirety with such other relief the Court deems just and appropriate.

Dated: April 1, 2008

S/_____
ANTHONY M. VITTORIOSO