

# MEYER SUOZZI

**Kevin Schlosser**

Meyer, Suozzi, English & Klein, P.C.  
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March 15, 2019

**BY ECF**

The Honorable Arthur D. Spatt  
United States District Judge  
c/o Clerk's Office  
United States District Court for the Eastern District of New York  
100 Federal Plaza, Courtroom 1020  
Central Islip, New York 11722-9014

Re: Meyer, Suozzi, English & Klein, P.C. v. Higbee et al.  
18-CV-03353 (ADS) (ARL)

Dear Judge Spatt:

We are plaintiff (pro se) in the above matter. We are writing pursuant to Your Honor's Rule IV.B(ii) to request oral argument and/or a conference concerning the motion by defendants Mathew K. Higbee and Higbee & Associates ("Higbee Defendants") to dismiss the complaint pursuant to FRCP 12(b)(6) (DE 9).

I explain briefly below why we believe oral argument and/or a conference would be essential to protect our rights and, in fact, helpful to the Court, given the Higbee Defendants' latest "reply" filings (DE 25 and 27) as well as the other very recent court filing of defendants Nick Youngson and RM Media Ltd. ("RM Media")(DE 24.)

As is clear from the Complaint in this matter, this action involves the deceitful scheme orchestrated by and among the defendants to abuse the United States Copyright laws to "catch" unsuspecting and innocent victims and thereby extort unjustified payments to settle bogus claims of "copyright infringement" that the

purported copyright owners never intended to pursue in any event. See Complaint, DE 1. The Higbee Defendants purported to move to dismiss the complaint under FRCP 12(b)(6), but, as noted in our opposition (DE 10, 11), the Higbee Defendants improperly sought to reference and rely upon materials and extraneous information beyond the four corners of the Complaint and its exhibits. The Higbee Defendants have continued that improper pattern in their so-called “reply” papers – submitting yet further extraneous materials outside the scope of FRCP 12(b)(6).

Plaintiff requests an opportunity to address in oral argument these extraneous materials, particularly, those submitted in the Higbee Defendants’ latest reply on March 15, 2019 (DE 27).

Moreover, the latest events in this matter, to which the Court may take judicial notice, graphically support the theory of this case and the extortionate, improper scheme perpetrated by defendants. Indeed, based upon these recent events, it may be appropriate for plaintiff to amend its complaint, including adding, potentially, claims under the Racketeer Influenced and Corrupt Organizations Act, 18 USC §§ 1961-1968, Ch. 96.

I will explain what I mean: Before plaintiff instituted this action, the Higbee Defendants threatened to institute an action in this Court in the Eastern District of New York (EDNY) against plaintiff on behalf of defendant RM Media, Ltd. for “copyright infringement” claiming that RM Media “is entitled to recover Statutory Damages of up to \$150,000 for each infringement and may also recover **attorney fees and court costs**. See 17 U.S.C. §§ 504 & 505.” (See letter attached hereto)(emphasis original). In that

letter, the Higbee Defendants specifically claimed that plaintiff “engaged in copyright infringement when it posted our client’s copyrighted image on its website without a valid licensing agreement.” (Id. emphasis added.) This directly contradicts the arguments the Higbee Defendants are now asserting in the motion, which we can explain further during oral argument.

Further, the Higbee Defendants attached to that threatening letter a “draft” complaint on behalf of RM Media against plaintiff claiming that they would file that action here in the EDNY within 15 days if they were not paid the extortionate amount they were demanding from plaintiff. A copy of that “draft” complaint is with the annexed letter. This is extremely significant in light of the latest submissions to this Court filed by defendants Nick Youngson and RM Media, in which they claim this Court has no jurisdiction over them. (DE 24.) That is, after the Higbee Defendants threatened plaintiff with that lawsuit claiming copyright infringement on behalf of RM Media, Ltd. (and apparently Nick Youngson who appears to be an unnamed individual copyright owner alleged in that draft complaint), plaintiff instituted this declaratory judgment action to, among other things, declare that there was no claim for “copyright infringement” on behalf of RM Media and therefore the Higbee Defendants were part of a deceptive scheme to extort money by abusing the Copyright law. Thus, plaintiff named as defendants in this action not only the Higbee Defendants, but also Nick Youngson and RM Media – the purported owners and/or assignee of the alleged copyright material that was the subject of the Higbee Defendants’ extortionate threats.

Shockingly, although the Higbee Defendants threatened to bring an action on behalf of RM Media against plaintiff for copyright infringement in this Court in the EDNY, now, after plaintiff has instituted this declaratory judgment action concerning precisely the same disputed “copyright infringement,” both Nick Youngson and RM Media are seeking to dodge service of process and contest this Court’s jurisdiction over them. This proves the very deceptive scheme that is at the heart of plaintiff’s complaint in this matter. That is, the Higbee Defendants obviously intended to intimidate and scare plaintiff into paying an extortionate amount to settle claims they threatened to bring in this Court on behalf of RM Media, but now, when the very subject matter of those claims is precisely at the heart of this action, RM Media is trying to avoid the issues being decided and has thereby sought to evade the jurisdiction of this Court. In short, how can the defendants threaten suit in this very Court, and then when an action is instituted to resolve that very subject matter, they claim the Court does not have jurisdiction over them because they reside in England and they are trying to circumvent service?

The underhanded practices of defendants have also been continued through the Higbee Defendants’ submissions to Your Honor in this lawsuit. While they purport to appear by an attorney admitted to this Court, their papers reflect either a reckless failure to read the basic rules that Your Honor has promulgated as well as the Local Rules of this Court, or an intentional violation of such Rules. As the Court is aware, the Higbee Defendants have violated the Rules not just once, but twice. The first time, they blatantly violated Your Honor’s Rules by including footnotes and far exceeding the page limitation on reply memoranda. (DE 12.) While Your Honor was generous enough to

give them a second bite at the apple notwithstanding their flagrant violation of the Rules in the first reply, they violated the Rules in a more deceptive manner in the revised reply, by narrowing their text to less than the required "double space" as explicitly set forth in Local Rule 11.1(b)(3). Since the Higbee Defendants were given yet another opportunity to revise their reply again, they have taken advantage of their own violation of Rules to re-craft their arguments. We trust that the Court's intent in allowing the Higbee Defendants two chances to conform their papers to the Rules was not to provide them with eight more months to submit a revamped reply (after their motion to dismiss was submitted back in July of 2018). This is another topic that we would like to address at oral argument and/or a Court conference.

We thank Your Honor for considering this request for oral argument and/or a court conference concerning the motion to dismiss and the recent filings.

Respectfully yours,

/s/ Kevin Schlosser

KS:jr  
Attachment

cc: Defense Counsel of Record (by ECF)

## **ATTACHMENT TO LETTER OF MARCH 15, 2019**

5/9/2018

**SENT VIA FIRST-CLASS MAIL**

RE: RM Media, Ltd. - v. Meyer, Suozzi, English & Klein, P.C. - Our Case No. 509950

Dear Sir or Madam:

Higbee & Associates has been retained to represent RM Media, Ltd. in regards to Meyer, Suozzi, English & Klein, P.C. copyright infringement under Title 17 of the United State Code.

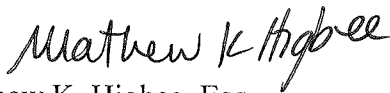
Meyer, Suozzi, English & Klein, P.C. engaged in copyright infringement when it posted our client's copyrighted image on its website without a valid licensing agreement. We have attempted to settle this matter to no avail. Please see the enclosed Complaint and Exhibits for further information.

Our client is entitled to recover Statutory damages of up to \$150,000 for each infringement and may also recover **attorney fees and court costs**. See 17 U.S.C. §§ 504 & 505.

In an effort to keep costs down, our client is willing to accept a firm settlement of \$5,280 to resolve this matter amicably and avoid litigation. This offer will be open for fifteen (15) days from the date of this letter, after which our client has instructed us to file the enclosed Complaint and seek damages to the full extent of the law.

If you have questions you may contact us at (714) 617-8350 or (800) 716-1245.

Sincerely,



Mathew K. Higbee, Esq.  
Attorney at Law  
infringements@higbeeassociates.com

Enclosure(s)

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
DIVISION OF BROOKLYN**

RM MEDIA, LTD.

Plaintiff,

v.

MEYER, SUOZZI, ENGLISH  
& KLEIN, P.C.,

Defendant.

**CASE NO.** \_\_\_\_\_

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

Plaintiff, RM Media, Ltd., for his Complaint against Meyer, Suozzi, English & Klein, P.C., Defendant, alleges as follows:

**INTRODUCTION**

1. RM Media, Ltd. (hereinafter "Plaintiff"), by Plaintiff's attorneys, brings this action to challenge the actions of Meyer, Suozzi, English & Klein, P.C. (hereinafter "Defendant"), with regard to the unlawful use of a copyrighted image (hereinafter "Image") owned by Plaintiff, and this conduct caused Plaintiff damages.



2. For the purposes of this Complaint for Damages, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendant(s) named in this caption.

### **JURISDICTION AND VENUE**

3. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, whereby the Defendant violated Plaintiff’s exclusive rights as copyright owner pursuant to 17 U.S.C. § 106.

4. This Court has subject matter jurisdiction over Plaintiff’s claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

5. This Court has personal jurisdiction over Defendant because Defendant is a business entity incorporated in the State of New York Defendant’s acts of infringement complained of herein occurred in the State of New York, and Defendant has caused injury to Plaintiff in his intellectual property within the State of New York.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the Defendant resides in this judicial district and a substantial part of the events

giving rise to Plaintiff's claim occurred in this judicial district.

Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendant committed the acts of infringement and has a regular and established place of business in this judicial district.

### **PARTIES**

7. Plaintiff is a natural person and is a professional photographer by trade.

8. Plaintiff is a "copyright owner" who holds "exclusive rights" to the "copyrighted work[s]" pursuant to 17 U.S.C. §§ 101 and 106.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is a business entity operating in the City of Garden City, in the State of New York, and conducted business within the City of Garden City, in the State of New York.

10. Plaintiff is informed and believes, and thereon alleges, that Defendant unlawfully published Plaintiff's copyrighted works without Plaintiff's express or implied authority, by the method of a license.

### **FACTUAL ALLEGATIONS**

11. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendant was a business entity residing within the State of New York.

12. Plaintiff is a well-known professional photographer. He sells or licenses photographs to people and companies seeking to make use of the photographs for advertisements and pecuniary gain. Plaintiff's livelihood is dependent on receiving compensation for the photographs he produces.

13. Plaintiff took the original image, *see* Original Image(s) attached hereto as Exhibit A.

14. Plaintiff has ownership rights and copyrights to the Image(s).

15. Plaintiff has registered the Image(s) with the United States Copyright Office under registration number(s) Vau 1-248-878, *see* Registration Certificate(s) attached hereto as Exhibit B.

16. Plaintiff did not consent to authorize, permit, or allow in any manner the use of the Image by Defendant.

17. Plaintiff is informed and believes that Defendant used Plaintiff's copyrighted works without his permission and that it published, communicated, benefited through, posted, publicized and otherwise held out to the public, the original and unique work of Plaintiff without Plaintiff's consent or authority.

18. Plaintiff is informed and believes that Defendant used the Image on Defendant's website from December 26, 2017 to January 19, 2018, *see* Screenshots of Defendant's use attached hereto as Exhibit C.

19. Defendant uses the Image to promote the Defendant's website.
20. Plaintiff did not consent to the use of his Image.

**FIRST CAUSE OF ACTION**  
**COPYRIGHT INFRINGEMENT**  
**Title 17 of the United States Code**

21. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

22. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original materials and/or work.

23. Plaintiff is informed and believes and thereon alleges that said Defendant breached Title 17 of the U.S. Code in that it published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique work of the Plaintiff's consent or authority and acquired monetary gain and market benefit as a result.

24. As a result of each and every Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b) or statutory damages in an amount up to \$150,000.00 if willful or up to \$30,000.00 if unintentional pursuant to 17 U.S.C. § 504.

25. As a result of the Defendant's violations of Title 17 of the U.S. code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C §505 from Defendant.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant

- Awarding statutory damages pursuant to 17 U.S.C. § 504(c) or actual damages pursuant to (504)(b).
- Awarding costs of litigation and reasonable attorney's fees, pursuant to 17 U.S.C. § 505;
- Enjoining the Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502(a); and
- Providing such other and further relief the Court deems just and proper under the circumstances.

Dated: \_\_\_\_\_

Respectfully submitted,

/s/ Mathew K. Higbee

Mathew K. Higbee, Esq.

(Pro Hac Vice Pending)

HIGBEE & ASSOCIATES

1504 Brookhollow Dr, Ste 112

Santa Ana, CA 92705-5418

(714) 617-8350

FAX (714) 597-6729

*Attorney for Plaintiff*

**DEMAND FOR JURY TRIAL**

Plaintiff, RM Media, Ltd., hereby demands a trial by jury in the above matter.

Dated: \_\_\_\_\_

Respectfully submitted,

/s/ Mathew K. Higbee  
Mathew K. Higbee, Esq.  
(Pro Hac Vice Pending)  
HIGBEE & ASSOCIATES  
1504 Brookhollow Dr, Ste 112  
Santa Ana, CA 92705-5418  
(714) 617-8350  
FAX (714) 597-6729  
*Attorney for Plaintiff*

# **EXHIBIT A**

**Original Image**

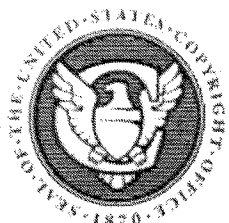
prove or  
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# **EXHIBIT B**

## **Copyright Registration Certificate**

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

United States Register of Copyrights and Director

Registration Number

**VAu 1-248-878**

Effective Date of Registration:

June 10, 2016

Title

Title of Work: still-images-16-06-10

Completion/Publication

Year of Completion: 2016

Author

• Author: Nicholas Youngson  
Author Created: photograph  
Domiciled in: England

Copyright Claimant

Copyright Claimant: Nicholas Youngson  
15 Church Road, Liverpool, L24 4AY, England

Rights and Permissions

Name: Nicholas Youngson  
Email: [nick@nyphotographie.com](mailto:nick@nyphotographie.com)  
Telephone: 1514255987  
Address: 15 Church Road  
Liverpool L24 4AY England

Certification

Name: N Youngson  
Date: June 10, 2016

Copyright Office notes: Basis for Registration: Unpublished collection

# **EXHIBIT C**

## **Screenshots of Defendant's Use**

MEYER SUOZZI



**KEVIN SCHLOSSER**

990 Stewart Avenue  
Garden City, NY 11530  
Direct: (516) 592-5709  
Fax: (516) 741-6706  
kschlosser@msek.com  
Download VCard

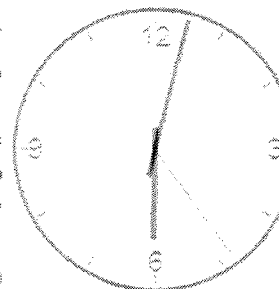
**ABOUT THE AUTHOR**

Kevin Schlosser, Chair of Meyer Suozzi's Litigation Department, has over 30 years of experience in civil litigation and has won significant victories involving claims of fraud and misrepresentation on behalf of

# Standards of Pleading and Proof of Fraud

Dec 26, 2017

<< < January 2018 > >>						
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6:02pm Friday 19 January 2018



EMAIL ADDRESS

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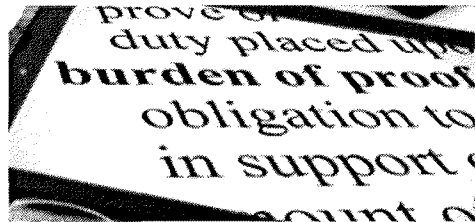
## LOCATIONS



Need to speak to someone?  
Give us a call.

(800) 734-0565

Meyer, Suozzi, English & Klein,  
P.C.



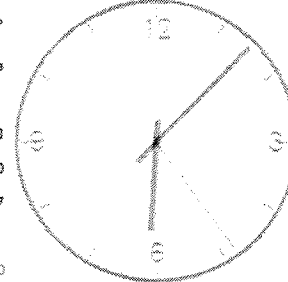
## Misrepresentation Amount to

JANUARY 8, 2018

PRINT + SHARE

Typically, where fraud  
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into the contract. Plaintiffs seeking to allege ...

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6:07pm Friday 19 January 2018



## Standards of Pleading and Proof For Various Claims of Fraud

DECEMBER 26, 2017

PRINT + SHARE

My previous post addressed the different statutes of limitations that apply to claims of actual fraud, where intent to defraud is a necessary element, and constructive fraud, where proving intent to defraud is not required. The difference is that claims ...

## Different Statutes of Limitations for Actual and Constructive Fraud

MEYER SUOZZI

OUR FIRM

SERVICES

ATTORNEYS

NEWS & EVENTS

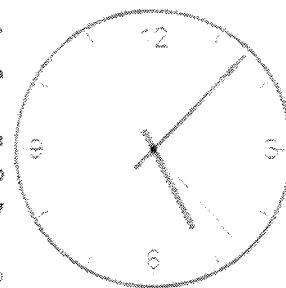
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# Kevin Schlosser Authors, "S For Various Claims of Fraud"

<< < January 2018 > >>

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5:07pm Friday 19 January 2018



# MEYER SUOZZI

OUR FIRM

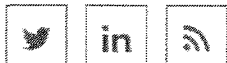
SERVICES

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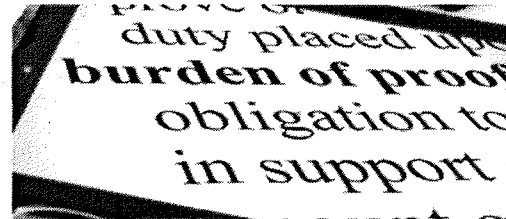
Typically, where fraud claims arise in connection with contracts, the elements of the cause of action for fraud involve claims that misrepresentations of existing fact were made to induce a party to enter into the contract. Plaintiffs seeking to allege ...



JANUARY 2, 2018, NEWS

A. Thomas Levin Quoted In The Island Now, "Final Public Hearing Date Set For Clover...

signed into law by the President on December 22, 2017. While the new law maintains the overall framework of the existing federal estate, gift and generation-skipping ...



DECEMBER 26, 2017, BLOG

Kevin Schlosser Authors, "Standards of Pleading and Proof For Various Claims of...

Source: [www.nyfraudclaims.com](http://www.nyfraudclaims.com)

tax assessment! This is certainly a difficult way for Laura Curran's Democratic Administration to start off the New Year - being handed a broken system and having to handle numerous ...



DECEMBER 22, 2017, NEWS

A. Thomas Levin Quoted In The Island Now, "North Hills Denies Building Permit Extension...

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M.B.E. & K., PC.



# Higbee & Associates

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Santa Ana, CA 92705

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Garden City, NY 11530