



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IAN MITCHELL, GORDON CLARK and :
PAT MCGLYNN, :
:

Plaintiffs, :

-against- :

ERIC FAULKNER, DUNCAN FAURE, :
ALAN LONGMUIR, DEREK LONGMUIR, :
LESLIE MCKEOWN, STUART WOOD and :
ARISTA RECORDS LLC, :

Defendants. :

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LORETTA A. PRESKA, Chief United States District Judge:

Ian Mitchell, Gordon Clark, and Pat McGlynn

("Plaintiffs") bring this action against Defendants Eric
Faulkner, Duncan Faure, Alan Longmuir, Derek Longmuir, Leslie
McKeown, and Stewart Wood (the "Rollers"), formerly the band
"The Bay City Rollers", who in turn are plaintiffs in a
previously filed separate action against Defendant Arista
Records LLC ("Arista") for royalties. (07-cv-2318).

Plaintiffs, each of whom at one time performed with the band,
assert the right to declaratory relief claiming anticipatory
breach of contract and unjust enrichment against the Rollers,
alleging a right to a proportionate share of any royalties paid
in the future to the Rollers by Arista.¹ The Rollers have filed

¹ The Complaint had also included a claim for accounting,
(continued)

for unjust enrichment should be dismissed."); see also Zeising, 152 F. Supp. 2d at 345 (S.D.N.Y. 2001) (dismissing unjust enrichment and quantum meruit claims because they "depend upon proof of an unenforceable contract").

Because Plaintiffs have failed to allege facts establishing a basis for a claim of unjust enrichment independent from those supporting the breach of contract claim, Plaintiffs' claim for unjust enrichment and any claim for declaratory relief based on that claim are dismissed.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss Plaintiffs' Complaint in its entirety [dkt. no. 24] is GRANTED.

SO ORDERED.

Dated: New York, New York
January 14, 2013


UNITED STATES DISTRICT JUDGE