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COMP
Kelly A. Evans, Esq.
Nevada Bar No. 7691
Jeffrey F. Barr, Esq.
Nevada Bar No. 7269
SNELL & WILMER
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89109
Telephone: (702) 784-5222

MILO SILBERSTEIN, ESQ.
(Pro Hac Vice Application To Be Filed)
DEALY & SILBERSTEIN, LLP
225 Broadway, Suite 1405
New York, New York 10007
Telephone: (212) 385-0066

ATTORNEYS FOR PLAINTIFF

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN HUNTINGTON,)
)
Plaintiff,)
)
vs.)
)
CAREY HART, HART & HUNTINGTON,)
LLC and HUNTINGTON, HART & GOMEZ,)
LLC,)
)
Defendants.)

FILED
SEP 6 3 41 PM '06
Shirley L. ...
CLERK

Case No. **A527732**
Dept. No. **XVI**
COMPLAINT

Plaintiff John Huntington, by his attorneys, Snell & Wilmer and Dealy & Silberstein, LLP, complaining of Defendants Carey Hart, Hart & Huntington, LLC and Huntington, Hart & Gomez, LLC, alleges as follows:

NATURE OF ACTION

1. This action arises out of the improper conduct of Defendant Carey Hart, who, having purchased Plaintiff's membership interest in Defendant Hart & Huntington, LLC ("Hart &

1 Huntington”), a company which owns and operates the world famous Hart & Huntington tattoo
2 parlor in the Palms Resort Casino in Las Vegas, Nevada, and which is featured on the reality
3 show “Inked” on the A&E cable network, has now refused to pay Plaintiff the sums due pursuant
4 to the purchase agreement, and has also refused to provide Plaintiff with access to the financial
5 information, including the books and records, of Defendant Hart & Huntington and Defendant
6 Huntington, Hart & Gomez (“HHG”). HHG is a company established to handle the
7 merchandising for Defendant Hart & Huntington. Accordingly, Plaintiff brings this action for (1)
8 damages based upon Defendant Carey Hart’s breach of the purchase agreement; and (2) to
9 compel an accounting of Defendants Hart & Huntington and HHG.

10 **PARTIES**

11 2. Plaintiff John Huntington resides at

12
13 3. Upon information and belief, Defendant Carey Hart is a resident of California.

14 4. Defendant Hart & Huntington is a Nevada Limited-Liability Company, formed on
15 or about May 28, 2003.

16 5. Defendant Huntington, Hart & Gomez, LLC (“Defendant HHG”) was at all
17 relevant times a Nevada Limited-Liability Company, and, upon information and belief, was
18 improperly dissolved by Defendant Carey Hart on or about December 20, 2005.

19 **GENERAL ALLEGATIONS**

20 6. Plaintiff was the former owner of forty-eight (48%) percent of Defendant Hart &
21 Huntington.

22 7. At all relevant times, Plaintiff also possessed a one third (1/3) ownership interest
23 in Defendant HHG.

24 8. At all relevant times Defendant Hart & Huntington has owned and operated a
25 tattoo parlor located in the Palms Casino Resort (the “Palms”) in Las Vegas, Nevada, which does
26 business under the tradename “Hart & Huntington”.
27
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1 9. The Hart & Huntington tattoo parlor in the Palms and the tradename "Hart &
2 Huntington" have garnered international fame as a result of being featured on "Inked", a reality
3 show broadcast on the A&E cable network, which in May 2006 began its second season.

4 10. In or around January 2005, pursuant to a purchase agreement (the "Agreement"),
5 Plaintiff sold his forty-eight (48%) percent interest in Defendant Hart & Huntington to Defendant
6 Carey Hart (the "Closing").

7 11. Pursuant to the Agreement, Plaintiff is entitled to five (5%) percent of the gross
8 profits of Defendant Hart & Huntington from the date of the Closing forward for, inter alia, the
9 perpetual use of the tradename, mark and likeness "Hart & Huntington".

10 12. Pursuant to the Agreement, Plaintiff sold solely his interest in Defendant Hart &
11 Huntington to Defendant Carey Hart, and Plaintiff maintained his ownership interest in Defendant
12 HHG, a company established by, inter alia, Plaintiff and Defendant Carey Hart to handle
13 merchandising for Defendant Hart & Huntington.

14 13. However, since in or around August 2005 through the present time, Plaintiff has
15 not received any financial reports or any payments for his percentage of the gross profits from
16 Defendant Hart & Huntington.

17 14. Moreover, while Plaintiff did receive a payment from Defendants Carey Hart and
18 Hart & Huntington purporting to represent his percentage of the gross profits of Defendant Hart
19 & Huntington for the period from the Closing through July 2005, upon information and belief,
20 this payment was inadequate because Defendant Carey Hart misrepresented the true amount of
21 sales by Defendant Hart & Huntington for the subject period.

22 15. In addition, from the time of the Closing through the present time, Plaintiff has
23 received no financial reports or payments for his one third (1/3) ownership interest in Defendant
24 HHG.

25 16. Although Plaintiff is a member of Defendant HHG, upon information and belief,
26 on or about December 20, 2005, Defendant Carey Hart improperly dissolved Defendant HHG
27 without first informing Plaintiff or obtaining Plaintiff's permission to dissolve the company.

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1 17. Upon information and belief, Defendant Carey Hart has established a new
2 company, whose identity is currently unknown to Plaintiff, to handle some or all of the
3 merchandising opportunities for Defendant Hart & Huntington that were previously handled by
4 Defendant HHG.

5 18. Upon information and belief, since the Closing, the licensing of the tradename
6 "Hart & Huntington" has dramatically expanded because of the reality show "Inked". The logos
7 and tradenames of Hart & Huntington now appear on items such as T-shirts and other apparel, as
8 well as more exotic items such as slot machines. Plaintiff has received no remuneration for these
9 items as required by the Agreement.

10 19. Pursuant to the Agreement, Plaintiff is expressly permitted to audit both Defendant
11 Hart & Huntington and Defendant HHG.

12 20. By letters dated April 27, 2006 and May 17, 2006, copies of which are annexed
13 hereto as Exhibit A, Plaintiff, by his attorneys, informed Defendant Carey Hart that he wished to
14 conduct an audit of Defendants Hart & Huntington & HHG. Plaintiff has received no response to
15 these two (2) letters.

16 21. Defendant Carey Hart has similarly failed to respond to repeated telephonic
17 requests by Plaintiff's attorneys seeking to schedule an audit of Defendants Hart & Huntington &
18 HHG.

19 **FIRST CLAIM FOR RELIEF AGAINST DEFENDANT CAREY HART**

20 **(Breach of Contract)**

21 22. Plaintiff repeats and realleges each and every allegation contained in the preceding
22 paragraphs 1 through 21 as though fully set forth herein.

23 23. Pursuant to the Agreement, from the date of the Closing forward, Plaintiff is
24 entitled to five (5%) percent of the gross profits of Defendant Hart & Huntington for, inter alia,
25 the perpetual use of the tradename, mark and likeness "Hart & Huntington".

26 24. Defendant Carey Hart has failed to pay Plaintiff the sums due for his percentage of
27 the gross profits.

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1 25. As a result of the foregoing, Defendant Carey Hart has breached his Agreement
2 with Plaintiff.

3 26. As a result of the foregoing, Plaintiff has been damaged in an amount yet to be
4 determined, but which is believed to be in excess of five hundred thousand (\$500,000) dollars.

5 27. Furthermore, pursuant to Section 10.7 of the Agreement, Plaintiff is entitled to
6 recover all of his costs and expenses incurred in connection with this action, including without
7 limitation, reasonable attorneys' fees.

8 **SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS**

9 **HART & HUNTINGTON AND HHG**

10 **(Accounting)**

11 28. Plaintiff repeats and realleges each and every allegation contained in the preceding
12 paragraphs 1 through 27 as though fully set forth herein.

13 29. Pursuant to the express terms of the Agreement, Plaintiff is entitled to conduct an
14 audit of the books and records of Defendants Hart & Huntington and HHG and to receive copies
15 of all financial reports, tax returns and accountings of the companies.

16 30. Plaintiff has no adequate remedy at law.

17 31. Pursuant to Section 10.7 of the Agreement, Plaintiff is entitled to recover all of his
18 costs and expenses including accounting fees incurred in connection with this action and,
19 including without limitation, reasonable attorneys' fees.

20 **THIRD CLAIM FOR RELIEF AGAINST DEFENDANT CAREY HART**

21 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

22 32. Plaintiff repeats and realleges each and every allegation contained in the preceding
23 paragraphs 1 through 31 as though fully set forth herein.

24 33. Every contract contains an implied covenant of good faith and fair dealing that the
25 parties will do nothing which would injure the right of the others to receive the benefits.

26 34. As a contract, the Agreement contains an implied covenant of good faith and fair
27 dealing.

28

1 35. Based on the conduct of Defendant Carey Hart alleged in this Complaint,
2 Defendant Carey Hart has breached his covenant of good faith and fair dealing and deprived
3 Plaintiff of his justified expectations of the benefits under the Agreement.

4 36. Whether a breach in the contract exists or not, Defendant breached the implied
5 covenant of good faith and fair dealing, which is an independent allegation and obligation.

6 37. As a direct and proximate result of Defendant's breach, Plaintiff has suffered
7 damages in an amount in excess of ten thousand dollars (\$10,000.00) plus interest, costs and
8 expenses.

9 38. As a result of Defendant's wrongful conduct, Plaintiff has been forced to retain
10 counsel to prosecute this action and is entitled to recover reasonable attorneys' fees and costs of
11 suit.

12 **FOURTH CLAIM FOR RELIEF AGAINST DEFENDANT CAREY HART**

13 **(Unjust Enrichment)**

14 39. Plaintiff repeats and realleges each and every allegation contained in the preceding
15 paragraphs 1 through 38 as though fully set forth herein.

16 40. Defendant Carey Hart unjustly retained the money owed to Plaintiff against the
17 fundamental principles of justice or equity and good conscience.

18 41. As a result of Defendant's wrongful conduct, Plaintiff has been damaged in an
19 amount in excess of \$10,000 and is entitled to judgment against Defendants.

20 42. As a result of Defendant's wrongful conduct, Plaintiff has been forced to retain
21 counsel to prosecute this action and is entitled to recover reasonable attorneys' fees and costs of
22 suit.

23 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

24 1. On the First Claim for Relief, in favor of Plaintiff and against Defendant Hart in an
25 amount yet to be determined, but which is believed to exceed five hundred thousand (\$500,000)
26 dollars, plus interest thereon, and the costs and expenses incurred in connection with this action,
27 including without limitation, reasonable attorneys' fees.

28

DEALY & SILBERSTEIN, LLP

COUNSELLORS AT LAW
225 BROADWAY, SUITE 1405
NEW YORK, NEW YORK 10007-3001
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EMAIL ADDRESS: WJD@DEALYSILBERSTEIN.COM

WILLIAM J. DEALY
MILO SILBERSTEIN

OF COUNSEL:
KENNETH A. ROSENBLUM

April 27, 2006

VIA FEDERAL EXPRESS

Mr. Carey Hart
c/o
John T. Moran III, Esq.
630 South Fourth Street
Las Vegas, Nevada 89101

Re: John Huntington/Carey Hart
(Hart & Huntington, LLC Purchase Agreement)

Dear Mr. Hart:

This firm represents John Huntington.

This letter shall serve as notice that Mr. Huntington has elected to conduct an audit of both Hart & Huntington, LLC and Huntington, Hart & Gomez, LLC pursuant to the operative provisions of the Purchase Agreement by and between you and Mr. Huntington.

Mr. Huntington's auditors are Mahoney Cohen & Company, CPA, P.C. ("Mahoney Cohen"). Mahoney Cohen's contact information is as follows:

Mahoney Cohen & Company, CPA, P.C.
1065 Avenue of the Americas
New York, New York 10018

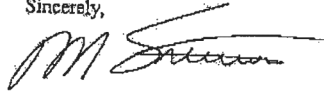
(212) 790-5700 - phone
(212) 790-5909 - facsimile

Enclosed is a letter from Charles Berk, CPA from Mahoney Cohen detailing the documents that his firm will need to conduct the audit. Please contact Mr. Berk to schedule the audit.

Mr. Carey Hart
April 27, 2006
Page Two

If you have any questions regarding the foregoing, please call the undersigned,

Sincerely,



Milo Silberstein

MS/rg
Enclosure
cc: Mr. John Huntington
Charles Berk, CPA

TMZ.com

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EMAIL ADDRESS: WJD@DEALYSILBERSTEIN.COM

WILLIAM J. DEALY
MLO SILBERSTEIN

OF COUNSEL:
KENNETH A. ROSENBLUM

May 17, 2006

VIA FACSIMILE & FIRST CLASS MAIL

John T. Moran III, Esq.
630 South Fourth Street
Las Vegas, Nevada 89101

Re: John Huntington/Carey Hart
(Hart & Huntington, LLC Purchase Agreement)

Dear Mr. Moran:

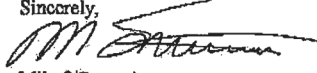
As you are aware, this firm represents John Huntington.

By letter dated April 27, 2006 (copy enclosed), you were informed that Mr. Huntington has elected to conduct an audit of both Hart & Huntington, LLC and Huntington, Hart & Gomez, LLC pursuant to the operative provisions of the Purchase Agreement (the "Agreement") by and between your client, Carey Hart, and Mr. Huntington. We have received no response from you to our letter. Similarly, you have failed to return several telephonic calls placed by the undersigned and my partner, William J. Dealy, Esq.

If we continue to receive no response to Mr. Huntington's audit request, Mr. Huntington will be left with no choice but to file an action seeking, inter alia, to compel the audit. In that event, you are reminded that pursuant to Section 10.7 of the Agreement, Mr. Huntington will be entitled to recover his attorney's fees and costs associated with such an action. Obviously, we hope that this will not be necessary.

Please call the undersigned upon your receipt of this letter to discuss the foregoing.

Sincerely,



Milo Silberstein

MS/rg

Enclosure

cc: Mr. John Huntington
Charles Berk, CPA