

ESTTA Tracking number: **ESTTA740871**

Filing date: **04/19/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221923
Party	Defendant Molotov Entertainment
Correspondence Address	M SCOTT ALPRIN ALPRIN LAW OFFICES PC 5 PINEHURST CIR NW WASHINGTON, DC 20015 UNITED STATES trademarks@alprinlaw.com
Submission	Motion to Suspend for Civil Action
Filer's Name	M. Scott Alprin
Filer's e-mail	trademarks@alprinlaw.com
Signature	/M. Scott Alprin/
Date	04/19/2016
Attachments	MTG v. Molotov Entertainment - Mot. to Suspend Pending Civil Case - Final PDF.pdf(1144083 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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)	
Molotov Theatre Group)	
)	
Opposer,)	
)	
v.)	Opposition No. 91221923
)	
)	Ser. No. 86230826 (opposed application)
Molotov Entertainment)	
)	
Applicant.)	
)	
-----)	

**MOTION TO SUSPEND CASE PENDING OUTCOME OF CIVIL MATTER
BEFORE D.C. SUPERIOR COURT**

Pursuant to TBMP Section 510.02(a) and 37 CFR Section 2.117(a), Applicant Molotov Entertainment (“Applicant”) hereby moves the Board to suspend the subject proceeding, including discovery deadlines for both sides, pending final determination of a related civil proceeding before the Superior Court of the District of Columbia, Civil Division, Case #2016 SC3 000849, WRIGHT, MICHAEL VS. MOLOTOV THEATRE GROUP et al (hereinafter, “the Civil Action”), involving Applicant in the position of plaintiff and Opposer Molotov Theatre Group (“MTG” or “Opposer”) in the position of defendant. It is noted that Michael Wright is the sole proprietor of Molotov Entertainment. A copy of the Complaint and a copy of the Praecipe setting the trial date for May 26, 2016 in the Civil Action are attached hereto. It is noted that an Answer was not required to be filed by Opposer in the Civil Action.

I. Background

On or around September 1, 2012, the owner of Applicant, Michael Wright, entered into an oral agreement with the owner of Opposer, Alex Zavistovich, to work together as Co-Artistic Directors and partners to promote MTG as a horror theatre production company, and to make MTG a success. This agreement shall be referred to as the “Five Year Plan.” Mr. Wright did not agree to be a volunteer, and did not agree that any financial contribution he made to MTG was to be considered a donation. Rather, Mr. Wright agreed to future compensation from MTG for his position as MTG’s co-artistic director, or, if MTG never succeeded by accomplishing their financial goals, to defer reimbursement of his costs.

In order to promote MTG and help to make it a success, Mr. Wright spent an immense amount of time and significant amount of money, expecting that Mr. Zavistovich would honor the aforementioned Five Year Plan. A sample of some of the actions that Mr. Wright undertook to promote MTG follow:

- The development of a multi-season schedule of shows.
- The expansion of the Board of Directors, fundraising efforts and audience development.
- The development of new educational programs and course offerings.
- The establishment of a permanent theater home and repertory company of actors.
- The creation, development and maintenance of a web based e-commerce portal for MTG.

On February 13, 2014, MTG, which had assembled a Board of Directors after Mr. Wright had become Co-Artistic Director, terminated Mr. Wright's position as Co-Artistic Director of MTG. As the Five Year Plan had not come to fruition, Mr. Wright seeks reimbursement from MTG for his expenses that benefitted MTG and/or financial contributions on behalf of MTG in the Civil Action.

I. Argument

Applicant herein moves the Board to suspend the subject opposition proceeding pending the outcome of the Civil Action.

As exemplified by TBMP Section 510.02(a) and 37 CFR Section 2.117(a), the Board's traditional policy is to suspend a Board action when there is a related civil action. *See General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933, 1936-37 (TTAB 1992). Further, it is not necessary that the related civil matter be dispositive of all issues before the Board. Rather, as the language in Section 2.117(a) states, it is in the Board's discretion to suspend an opposition or cancellation action based on a civil action which "may have a bearing on the case."

There is no doubt that the issues being litigated in the Civil Action are related to and have a bearing upon the issues being litigated in the subject opposition. In order for the judge in the Civil Action to determine if Mr. Wright is owed money by MTG under a number of legal doctrines, such as unjust enrichment, the judge will have to determine if Mr. Wright was a volunteer, an employee, or an independent contractor. The question of Mr. Wright's status at MTG is related to whether Mr. Wright is the proper owner of his applied-for trademark for "Molotov ENTERTAINMENT and Design." MTG has claimed that it is the owner of the "skull logo" that is part of Applicant's mark in discovery for this subject opposition; yet Mr. Wright was billed directly and paid the designer half of the fee to design the "skull logo" with his own money, and was never reimbursed. MTG approved of Mr. Wright being responsible for the operation of Molotov ENTERTAINMENT and agreed to give Mr. Wright autonomous control and ownership of this business. MTG did not want any affiliation with this "for-profit" business

due to MTG's concern that a conflict may exist that would jeopardize MTG's 501(c)3 non-profit charitable status with the Internal Revenue Service.

Based on the foregoing, Applicant respectfully requests that the Board grant Applicant's request to suspend the subject proceeding, including discovery deadlines for both sides, pending the outcome of the Civil Action.

Respectfully submitted,

ALPRIN LAW OFFICES, P.C.

Date: April 19, 2016



M. Scott Alprin
Nicholas T. Santucci
Alprin Law Offices, P.C.
5 Pinehurst Circle, N.W.
Washington, D.C. 20015
Tel: (202) 659-8225
Fax: (202) 659-0441
Email: trademarks@alprinlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Motion To Suspend Case Pending Outcome Of Civil Matter Before D.C. Superior Court** has been served on Opposer via e-mail, on April 19, 2016, to Kelu L. Sullivan, counsel for Opposer, at:

bhipdocket@bakerlaw.com,
ksullivan@bakerlaw.com

/M. Scott Alprin/
M. Scott Alprin

3 pages

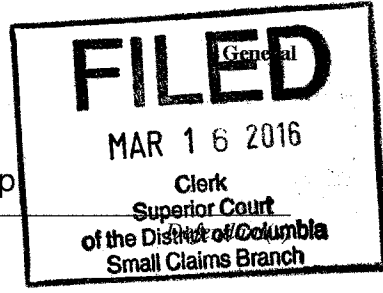
Superior Court of the District of Columbia

Small Claims Form 11

CIVIL DIVISION

SMALL CLAIMS AND CONCILIATION BRANCH

Bldg. B, 510 4th Street, N.W., RM -120
WASHINGTON, D.C. 20001 TELEPHONE 879-1120



Michael Wright

(1) Molotov Theatre Group

11609 Clipstone Ln

Plaintiff(s)

vs.

(2) Alex Zavistovich

Reston, VA 20191

(3)

Address Phone No. 703-624-6616 Zip Code

No. SE 2016SC(3)000849

Wash DC ✓

STATEMENT OF CLAIM

During my tenure as Co-Artistic Director of Molotov Theatre Group (Sept. 2012 - February 13, 2014) I paid third parties for the custom design, hosting and merchant account for an ecommerce web site and other projects that generated \$3,979 paid to the defendant on 11/22/13. I was terminated on 2/14/14 and have not been reimbursed for related expenses. I am seeking \$4,773 in damages.

DISTRICT OF COLUMBIA, ss: Michael Wright being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by the defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

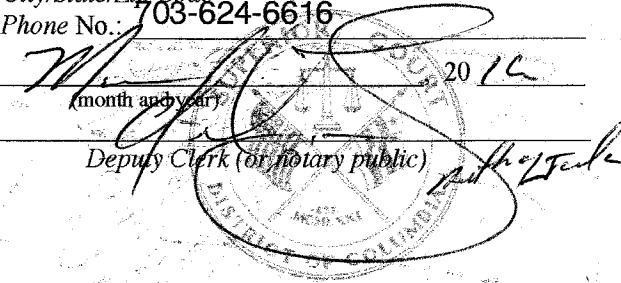
[Signature] / Michael Wright
Plaintiff / Agent (Sign and Print Name)

11609 Clipstone Ln.
Address Reston, VA 20191

Title:

City/State/Zip Code Phone No.: 703-624-6616

Subscribed and sworn to before me this 14 day of



Attorney for Plaintiff (Sign and Print Name)

Address Zip Code Bar No.: Phone No.:

NOTICE (All parties must notify the court of any address changes.)

To: (1) Molotov Theatre Group c/o Tia Pausic (2) Alex Zavistovich

411 9th St., NE, Washington DC, 20002 Defendant

221 Surrey Circle Dr, Fort Washington, MD 20744 Defendant

Address Zip Code Home Business

Address Zip Code Home Business

You are hereby notified that

Michael Wright has made a claim and is requesting judgment against you in the sum of four thousand seven hundred and seventy three dollars (\$4,773.00), as shown by the foregoing statement. The court will hold a hearing upon this claim on 4-15-14

at 9:00 a.m. in the Small Claims and Conciliation Courtroom 119, Bldg. B, 510 4th Street, N.W.,

SEE REVERSE SIDE FOR COMPLETE INSTRUCTIONS BRING THIS NOTICE WITH YOU AT ALL TIMES

INSTRUCTIONS TO DEFENDANTS

IMPORTANT: IF YOU FAIL TO APPEAR AT THE TIME STATED OR AT ANY OTHER TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY, DAMAGES OR OTHER RELIEF DEMANDED IN THE STATEMENT OF CLAIM. IF THIS OCCURS, YOUR WAGES OR BANK ACCOUNT MAY BE ATTACHED OR WITHHELD OR ANY PERSONAL PROPERTY OWNED BY YOU MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. DO NOT FAIL TO APPEAR AT THE REQUIRED TIME.

Before any case goes to trial in the Small Claims and Conciliation Branch, a trained mediator will meet with all parties to see if a settlement can be worked out. If all parties are present when your case is called, you and the plaintiff will be able to see a mediator and hopefully settle your dispute without having to go to trial.

You may come with or without a lawyer. The Statement of Claim indicates whether the plaintiff has a lawyer. If the plaintiff does have a lawyer and you wish to dispute the claim, it would be in your best interest to have your own lawyer.

If you wish to have legal advice and feel that you cannot afford to pay a fee to a lawyer, you may contact the Neighborhood Legal Services Program at (202) 269-5100, the DC Law Students in Court Program at (202) 638-4798, Legal Counsel for the Elderly at (202) 434-2170 or the Legal Aid Society at (202) 628-1161. If you need further help, come to Building B, 510 4th Street, N.W., Room 120, for more information concerning places where you may ask for such help. You may also consult the legal aid directory on www.lawhelp.org/dc. Act promptly.

If it is impossible for you to appear on the date of trial, attempt to contact the Plaintiff to arrange a new date. If parties agree on a date, notify the clerk of the Small Claims Branch of this court in person or by phone of the new date. If parties cannot agree, you may contact the clerk who will inform you regarding procedures. If you do not appear on the new date, a judgment may be entered against you.

Whenever corresponding with the Small Claims clerk's office by mail, please include your case number and your date to appear in court.

You are given the following additional instructions in the event that you intend to appear without a lawyer:

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim but desire additional time to pay, you must come to the hearing in person and state the circumstances to the Court.

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPAÑOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DEL COLUMBIA, BUILDING B, 510 4TH STREET N.W., SALA 120.

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C. BUILDING B, 510 4TH STREET N.W., ROOM 120.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
SMALL CLAIMS AND CONCILIATION BRANCH
INFORMATION SHEET**

Michael Wright

Plaintiff

Case No: 2016 SC(3)000849

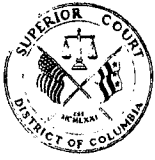
vs

Molotov Theatre Group / Alex Zavistovich

Defendant

Date: 3/16/2016

Michael Wright	
Name: <i>(please print)</i>	Relationship to Lawsuit
	<input type="checkbox"/> Attorney for Plaintiff
Firm Name, if applicable	<input checked="" type="checkbox"/> Self (Pro Se)
703-624-6616	
Telephone No:	6 Digit Unified Bar No. <input type="checkbox"/> Other: <input type="checkbox"/>
Do you need an interpreter for your case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, what type:	
AMOUNT IN CONTROVERSY: <input type="checkbox"/> \$1 -\$500 <input type="checkbox"/> \$500.01 - \$2,500 <input checked="" type="checkbox"/> \$2,500.01 - \$5,000	
PENDING CASE(S) RELATED TO THE ACTION BEING FILED:	
Case No: _____	Case No: _____
NATURE OF SUIT: <i>(Check One Box Only)</i>	
A. CONTRACTS – a claim based on an agreement between parties made either orally or in writing	
<input type="checkbox"/> Debt Suit	<input type="checkbox"/> Breach of Warranty
<input type="checkbox"/> Personal Property	<input type="checkbox"/> Loan
<input type="checkbox"/> Unpaid Wages	<input type="checkbox"/> Services Rendered
<input checked="" type="checkbox"/> Breach of Contract	<input type="checkbox"/> Home Improvement Contract
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> Rent Due
<input type="checkbox"/> Security Deposit	<input type="checkbox"/> Oral
B. PROPERTY TORTS – a claim for an injury or wrong committed on the property of another	
<input type="checkbox"/> Automobile	<input type="checkbox"/> Conversion
<input type="checkbox"/> Property Damage	<input type="checkbox"/> Destruction of Property
<input type="checkbox"/> Shop Lifting	<input type="checkbox"/> Trespass
C. PERSONAL TORT – a claim for an injury or wrong committed on the person of another	
<input type="checkbox"/> Assault and Battery	<input type="checkbox"/> False Witness
<input type="checkbox"/> Automobile	<input type="checkbox"/> Personal Injury
<input type="checkbox"/> Harassment	<input type="checkbox"/> Fraudulent Misrepresentation
<input type="checkbox"/> Libel and Slander	<input type="checkbox"/> Negligence
<input type="checkbox"/> Slip and Fall	
D. <input type="checkbox"/> UNIFORM ARBITRATION ACT – an action based on an arbitration agreement	G. <input type="checkbox"/> SUBROGATION – a claim filed by one person in the place of another
E. <input type="checkbox"/> FOREIGN JUDGMENT- a judgment, decree or order filed from another jurisdiction	H. <input type="checkbox"/> COLLECTION- a claim filed by a seller or lender to collect a consumer debt
F. <input type="checkbox"/> MEDICAL MALPRACTICE – a claim against a healthcare provider for professional misconduct	
Have you given notice of intention to file your lawsuit 90 days prior to filing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	



Superior Court of the District of Columbia
CIVIL DIVISION

FILED
IN OPEN COURT
APR 15 2016
Clerk
Superior Court
of the District of Columbia
Small Claims Branch

PRAECIPE

- CIVIL ACTION, Main Bldg., Rm. JM-170
- LANDLORD AND TENANT, Bldg. B, Rm. 110
- SMALL CLAIMS, Bldg. B, Rm. 120

04-15-2016

DATE

Michael Wright
Plaintiff

Molotov Theaters & Alex Zarustovsk
Defendant

Vs.

2016 SC(3)849

Case Number

The Clerk of said Court will note that this case is continue for trial on May 26, 2016 11:00 at the request of the court.

Attorney for Defendant Kelin Sullivan Baker & Hostetler LLP		Attorney for Plaintiff <i>[Signature]</i>	
Address 1050 Connecticut Ave NW Washington DC 20036		Address 11609 Clipstone Ln Reston, VA 20191	
Phone No. 702-961-1532	Bar No.	Phone No. 703-624-6616	Bar No.