SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

DEPARTMENT 53

JAMES VAN DER BEEK; Plaintiff, vs. STITCHER MEDIA LLC, et al.; Defendants.	Case No.: 22STCV27977 Hearing Date: January 19, 2024 Time: 10:00 a.m. ~~[TENTATIVE]~~ **ORDER RE:** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

MOVING PARTIES: Defendants Stitcher Media, LLC and Sirius XM Radio, Inc.

RESPONDING PARTY: Plaintiff James Van Der Beek

Motion for Summary Judgment

The court considered the moving, opposition, and reply papers filed in connection with this motion.

EVIDENTIARY OBJECTIONS

The court rules on plaintiff James Van Der Beek's evidentiary objections, filed on November 6, 2023, as follows:

The court overrules Objections Nos. 1-3.

The court rules on defendants Stitcher Media, LLC and Sirius XM Radio, Inc.'s evidentiary objections, filed on November 15, 2023, as follows:

The court overrules Objections Nos. 1-3.

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LEGAL STANDARD

The purpose of a motion for summary judgment or summary adjudication "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

"On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (*Scalf v. D.B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519.) A defendant or cross-defendant moving for summary judgment or summary adjudication "has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) "Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(2).) "If the plaintiff cannot do so, summary judgment should be granted." (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467.) "When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment." (*Id.* at p. 467; Code Civ. Proc., § 437c, subd. (c).)

DISCUSSION

Defendants Stitcher Media, LLC ("Stitcher") and Sirius XM Radio, Inc. ("Sirius XM") (collectively, "Defendants") move the court for an order granting summary judgment in their

favor and against plaintiff James Van Der Beek ("Plaintiff") on Plaintiff's Complaint, which alleges two causes of action for (1) breach of contract, and (2) breach of the implied covenant of good faith and fair dealing.

Defendants move for summary judgment on the grounds that (1) the parties did not enter into a contract because they did not execute a signed, written agreement as required, (2) the parties did not enter into a contract because there was no meeting of the minds regarding numerous material terms, and (3) even if the parties did reach an agreement, it does not satisfy the Statute of Frauds.

1. First Cause of Action for Breach of Contract

"'A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach.'" (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 402.)

The court finds that Defendants have met their burden of showing that the first cause of action for breach of contract has no merit because Defendants have shown that an element of the cause of action (the existence of a contract between Defendants and Plaintiff) cannot be established.

"It is essential to the existence of a contract that there should be: [¶] (1) Parties capable of contracting; [¶] (2) Their consent; [¶] (3) A lawful object; and, [¶] (4) A sufficient cause or consideration." (Civ. Code, § 1550.) "' "Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts." '" (*Moritz v. Universal City Studios LLC* (2020) 54 Cal.App.5th 238, 246.) "When it is clear, both from a provision that the proposed written contract would become operative *only* when signed by the parties as well as from any other evidence presented by the parties that both parties contemplated that acceptance of the contract's terms would be signified by signing it, the failure to sign the agreement means no binding contract was created. [Citations.] . . . . On the other hand, if the respective parties orally agreed upon all of the terms and conditions of a proposed written agreement with the mutual intention

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that the oral agreement should thereupon become binding, the mere fact that a formal written agreement to the same effect has not yet been signed does not alter the binding validity of the oral agreement." (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 359 [emphasis in original] [internal citations omitted].)

Defendants have submitted the April 28, 2022 document entitled "Untitled Dawson's Creek Rewatch Podcast – Proposal" (the "April 28 Proposal") that Plaintiff has alleged Defendants breached. (Compl., ¶¶ 35-37; Def. Index of Exhibits ("Def. Ex.") Ex. 1 to Ex. A, Pl. Dep [April 28 Proposal].) The first page of the April 28 Proposal states that it "is for discussion purposes only, is not a binding commitment in any respect, and is not to be interpreted in any respect as a binding commitment to negotiate, enter into or consummate the agreement contemplated herein." (Def. Ex. 1, p. JVDB000024, to Ex. A, Pl. Dep. [April 28 Proposal] [internal italics omitted].) It further states that "[t]he parties will be bound only by a definitive agreement signed by an authorized representative of each party." (*Ibid.* [internal italics omitted]) In sending the April 28 Proposal to Plaintiff's transactional attorney, Danny Miller ("Miller"), Stitcher's Associate Director of Business Development, Leah Reis-Dennis ("Reis-Dennis") (1) stated that she was attaching the April 28 Proposal, and (2) stated that, upon confirmation that it "look[ed] good on [Miller's] end," she would "pass it off to [Defendants'] partnerships team to kick things off, and [the] legal team to start contract drafting[.]" (Undisputed Material Fact ("UMF") No. 3 [Miller is Plaintiff's transactional attorney]; Reis-Dennis Decl., ¶ 1 [Reis-Dennis is the Associate Director of Business Development for Stitcher]; Def. Ex. 1 to Ex. A, Pl. Dep., p. JVDB000015 [April 28, 2022 email from Leah Reis-Dennis to Miller].)

The April 28 Proposal includes other language referencing the execution of a formal agreement. For example, the defined "Start Date" is September 1, 2022 "or signature of agreement[.]" (Def. Ex. 1, p. JVDB000024, to Ex. A, Pl. Dep. [April 28 Proposal].) It also provides for 25 percent payment of the minimum guarantee "on execution of the agreement[.]" (*Id.* at p. JVDB000025.) The definition of "sensitive categories" was to "be defined in the agreement[.]" (*Id.* at p. JVDB000026.) Further, the concluding paragraph labeled "Other" states that "[t]he agreement shall contain other customary terms and conditions including

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representations, warranties, indemnities, audits and accounting, and events of default" by the parties. (*Id.* at p. JVDB000027.) The parties did not sign a longform agreement, and Defendants elected not to move forward with the podcast. (Funk Decl., ¶ 5.)

Further, Defendants have submitted communications between the parties, in which they communicated the need to draft a longform agreement or referenced a final agreement. (UMF Nos. 14, 37; Def. Ex. 4, p. 1 to Ex. A, Pl. Dep. [Feb. 2, 2022 email from Miller stating "Please circulate a short/longform and let's dive into the paperwork" and Feb. 4, 2022 email from Reis-Dennis stating "If all [with the deal summary] looks good, please let [her] know and [she'll] get this sent over to [the] legal team to kick off the longform"]; Def. Ex. 4, p. JVDB 000015 to Ex. A, Pl. Dep. [April 28, 2022 email from Reis-Dennis stating "we are ready to call terms officially closed and (finally!) get the longform started"]; Def. Ex. 9, p. JVDB00195 to Ex. B, Pl. Dep. [April 11, 2022 email from Miller stating "Once the advertising categories are cleared, we'll get the final version from them"].)

The court finds that this evidence is sufficient to show that Plaintiff cannot establish that the parties entered into a contract because Defendants have shown that they, in expressing that the parties would only be bound by the execution of a definitive agreement, did not mutually intend to be bound by the terms of the April 28 Proposal.

As set forth above, Defendants have submitted evidence showing that the parties intended only to be bound by a formal and "definitive" agreement (described by the parties in their communications to be the "longform" agreement). Because Defendants have presented evidence showing that the parties did not sign and execute a definitive longform agreement as contemplated, the court finds that Defendants have shown that they did not enter into a contract with Plaintiff. (Funk Decl., ¶ 5; *Banner Entertainment, Inc.*, *supra*, 62 Cal.App.4th at p. 359 ["when parties to a proposed contract have themselves fixed the manner in which their assent is to be manifested, an assent thereto, in any other or different mode, will not be presumed"].)

The court finds that Plaintiff has not met his burden to show that a triable issue of material fact exists as to the element of the existence of a contract between Plaintiff and Defendants.

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Plaintiff contends that, together, the April 28 Proposal and the email sent by Reis-Dennis constitute a valid, binding contract between the parties. (Opp. p. 13:15-16.) In support of this argument, Plaintiff asserts that the parties objectively manifested their intent to be bound to the terms of the April 28 Proposal because (1) Reis-Dennis made various comments indicating that the terms were "closed;" (2) Defendants performed under the April 28 Proposal by working to locate a senior producer and requesting Plaintiff's payroll information; and (3) Plaintiff performed under the April 28 Proposal by writing for the podcast, developing a list of guests, and soliciting bids for the construction of a studio.

The court finds that Plaintiff's evidence is not sufficient to show that a triable issue of material fact exists as to whether Defendants outwardly manifested their assent and intent to be bound by the April 28 Proposal.

First, the court acknowledges that Plaintiff has submitted various emails from Reis-Dennis, in which she stated that the negotiations were closed. Specifically, Reis-Dennis stated (1) on April 28, 2022, that Defendants were "ready to call terms officially closed" in an email to Miller, and (2) on May 11, 2022, that she was "excited to announce that [Defendants] closed terms on the Dawson's Creek Rewatch Podcast hosted by" Plaintiff in an internal email. (Pl. Appendix of Evidence ("Pl. AOE"), Vol. 1, Ex. 5, p. 28; Pl. AOE, Vol. 6, Ex. 34, p. 393.) However, in those emails, Reis-Dennis also stated that Defendants would be working to begin drafting the longform agreement or requested that the longform be drafted. (Pl. Appendix of Evidence ("Pl. AOE"), Vol. 1, Ex. 5, p. 28 [requesting Miller to confirm that the April 28 Proposal "look[ed] good" and stating that she would "pass it off to . . . [the] legal team to start contract drafting"]; Pl. AOE Vol. 6, Ex. 43, p. 393 ["Seth—can we kick off a longform?"].)

Thus, the court finds that the representations made by Defendants' Reis-Dennis that the terms were "closed" (1) are not inconsistent with the language of the April 28 Proposal that the parties be bound only by the execution and signing of a "definitive agreement" by authorized representatives of each party, and (2) are insufficient to show that a triable issue of material fact exists as to the parties' mutual assent.

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Second, Plaintiff contends that Defendants began to perform under the terms of the April 28 Proposal because they worked to locate a senior producer and co-host near Austin, Texas and because they requested Plaintiff's payroll information.

As to the assertion that Defendants worked to locate a senior producer and co-host near Austin, Texas and secured advertisers, the court finds that Plaintiff did not submit sufficient evidence to support such a finding. Plaintiff generally cited to exhibits 34, 35, 38, 39, 10, and 11 in support of this assertion, but did not cite to the specific pages of those exhibits as required by the California Rules of Court. (Cal. Rules of Ct., rule 3.1350, subd. (d)(3) ["Citation to the evidence in support of each material fact [in the separate statement] must include reference to the exhibit, title, page, and line numbers"].) Thus, the court has not been provided sufficient information to verify that Plaintiff has submitted evidence showing that Defendants began to perform pursuant to the terms of the April 28 Proposal. Moreover, the court's review of the exhibits shows they do not appear to support Plaintiff's contention. The internal emails and Slack messages (1) indicate that a job description for the senior producer might have been started, (2) state that Defendants' employees were "pitching" co-hosts, and (3) show that Defendants' employees were discussing the concept for Plaintiff's podcast with each other. (Pl. AOE, Vol. 6, Ex. 34, p. 392; Pl. AOE, Vol. 7, Ex. 35, p. 396; Pl. AOE, Vol. 7, Ex. 38; Pl. AOE., Vol. 7, Ex. 39.) However, these communications do not adequately show that Defendants "worked to locate a senior producer and co-host near Austin, Texas, [and] secured advertisers[.]" (Pl. Material Fact No. 46.)

In support of his assertion that Defendants formally set up Plaintiff's payroll information, Plaintiff has submitted (1) the deposition testimony of Reis-Dennis, who testified that she requested "loanout info[rmation]" in order to set up payments to Plaintiff, and (2) the May 2, 2022 email from Reis-Dennis, in which she asked Miller to "send over [Plaintiff's] loanout info [*sic*] (LLC name and mailing address), as well as the best email for [Defendants] to send supplier/payment setup info [*sic*][.]" (Pl. AOE, Vol. 4, Ex. 23, Reis-Dennis Dep., pp. 85:21-23; Pl. AOE, Vol. 5, Ex. 27, p. 314.) However, when testifying, Reis-Dennis clarified that she requested this information so that Defendants could pay Plaintiff "[i]f the agreement was

signed." (Pl. AOE, Vol. 4, Ex. 23, Reis-Dennis Dep., p. 86:9-16.) Further, Plaintiff has not presented any evidence or argument showing that Reis-Dennis's request for information to set up payments in the future (1) is inconsistent with the earlier statements that the parties would be bound only upon the execution of a longform agreement, or (2) constitutes an outward manifestation that Defendants intended to be bound by the terms of the April 28 Proposal without such a longform agreement. The court also notes that Plaintiff did not present evidence showing that Defendants paid him pursuant to the terms of the April 28 Proposal and therefore did not present evidence showing that Defendants performed their obligations under the provisions regarding payment therein.

Third, although Plaintiff has submitted his own declaration, in which he states that he began to perform his obligations under the April 28 Proposal, Plaintiff has not explained how his conduct represents an outward manifestation to be bound thereby on the part of Defendants. (Van Der Beek Decl., ¶ 12 [Plaintiff "developed a list of guests and episode ideas, wrote content and material, began working on a podcast studio by scouting locations and soliciting bids"].)

Finally, the court notes that Plaintiff has also argued that Defendants' contention that no longform agreement was drafted is inconsistent with their employees' internal communications. Specifically, Plaintiff points to a Slack message in which one of Defendants' employees stated that the parties "did get to the agreement stage" but that Defendants "didn't send" the longform. (Pl. AOE Vol. 7, Ex. 40.) However, even if Defendants had drafted the longform agreement, Plaintiff's evidence shows that it was not sent to Plaintiff and therefore could not have been signed by him. (*Ibid.*)

The court finds that the evidence and arguments presented by Plaintiff are insufficient to show that a triable issue of material fact exists as to the parties' intent to be bound by the April 28 Proposal. As set forth above, mutual assent is determined under an objective standard upon consideration of "the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts." (*Moritz, supra*, 54 Cal.App.5th at p. 246 [internal quotations omitted].) The evidence submitted by the parties shows that (1) the April 28 Proposal included an outward expression of the parties that they would "be bound only by a definitive agreement

signed by an authorized representative of each party[,]" and (2) the statements made by Defendants as to the "closing" of the terms were made in connection with references to the drafting of a longform agreement, therefore constituting outward expressions that Defendants intended to be bound only upon execution of a definitive (i.e., longform) agreement. (Pl. AOE Vol. 4, Ex. 24 [April 28 Proposal]; Pl. AOE Vol. 1, Ex. 5, p. 28; Pl. AOE, Vol. 6, Ex. 34, p. 393.) Plaintiff has not submitted evidence showing that the parties executed a longform agreement in the manner contemplated by the April 28 Proposal.

Thus, the court finds that Plaintiff has not met his burden to show that there exists a triable issue of material fact as to the element of mutual assent and therefore has not shown that there is a triable issue of material fact as to the existence of a contract between the parties.

2. Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing

"' "The [implied] covenant of good faith [is] implied by law in every contract." "' (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244.) "The covenant is read into contracts and functions ' "as a *supplement* to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract." "' (*Ibid.*)

The court finds that Defendants have met their burden of showing that the second cause of action for breach of the covenant of good faith and fair dealing has no merit because Defendants have shown that an element of the cause of action (an underlying contract between the parties) cannot be established for the reasons set forth in connection with the first cause of action for breach of contract. (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1032 ["There is no obligation to deal fairly or in good faith absent an existing contract"]; *Thrifty Payless, Inc.*, *supra*, 218 Cal.App.4th at p. 1244 [covenant is read into contracts].)

The court finds that Plaintiff has not met his burden to show that a triable issue of material fact exists as to the element of an underlying contract between the parties for the reasons set forth in connection with the first cause of action for breach of contract.

3. Conclusion

For the reasons set forth above, the court finds that (1) Defendants have met their burden to show that the first and second causes of action have no merit, and (2) Plaintiff has not met his burden to show that a triable issue of material fact exists as to either the first or second causes of action.

Thus, the court finds that all the papers submitted show that there is no triable issue as to any material fact and that Defendants are entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) The court therefore grants Defendants' motion for summary judgment.

ORDER

The court grants defendants Stitcher Media, LLC and Sirius XM Radio, Inc.'s motion for summary judgment on plaintiff James Van Der Beek's Complaint.

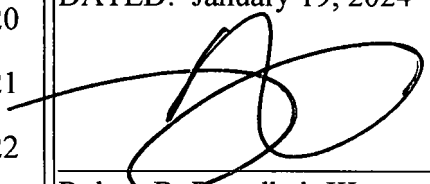
The court orders defendants Stitcher Media, LLC and Sirius XM Radio, Inc. to prepare, serve, and lodge a proposed judgment no later than 10 days from the date of this order.

The court sets an Order to Show Cause re entry of judgment for hearing on August 23, 2024, at 8:30 a.m., in Department 53.

The court orders defendants Stitcher Media, LLC and Sirius XM Radio, Inc. to give notice of this ruling.

IT IS SO ORDERED.

DATED: January 19, 2024



Robert B. Broadbelt III
Judge of the Superior Court

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