IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GILBERT A. CABOT	:	CIVIL ACTION
	:	
v.	:	
	:	
JAMIE RECORD COMPANY, et al.	:	NO. 96-4672

MEMORANDUM

A. Introduction

1. This court has subject matter jurisdiction over this action by reason of diversity of citizenship and amount pursuant to 28 U.S.C. § 1332. Plaintiff, Gilbert A. Cabot, is a resident and citizen of California. Defendants, Jamie Record Co. and Jamie Music Publishing Co. t/a Dandelion Music Co., are corporations organized and existing under Pennsylvania law with their principal places of business in Philadelphia, Pennsylvania. As pled, the amount in controversy exceeds $50,000, the statutory minimum at the time the complaint was filed. The parties agree and this court finds that the substantive law for Pennsylvania controls.

2. In the late 1960's, Cabot produced a number of phonograph records including "Fireball" and "Love Can Make You Happy" (together "the compositions"). The song, "Love Can Make You Happy," was recorded by the group "The Mercy" pursuant to an agreement between Cabot and the group's manager and songwriter, Jack

Sigler, Jr.

3. Around January 1969, Cabot, along with Frank M. Edmondson, Jr., formed a joint venture called Rendezvous/Tobac Music Co. (hereinafter "Rendezvous/Tobac"), for the purpose of engaging in business activities related to the sale and promotion of musical compositions.

4. Dandelion Music Co. is a registered fictitious trade name under and by which defendant, Jamie Music Publishing Co. (hereinafter "Dandelion"), operated and conducted its music publishing business.

5. Jamie Record Co. (hereinafter "Jamie Record") is a corporation involved in the manufacture of phonographs. At relevant times, Jamie Record distributed its records through, Jamie/Guyden Distributing Company ("Jamie/Guyden").

6. Harold B. Lipsius is and was, at all relevant times, the president and principal stockholder of Dandelion and Jamie Record (together "the defendants"), and the principal stockholder of Jamie/Guyden.

7. In 1969, Cabot, relinquished his copyrights and all other rights in the compositions to Dandelion and Jamie Record in exchange for advances and promises of future royalties. On February 26, 1969, Cabot, under the unregistered trade name, Gil Cabot Enterprises, Inc. (hereinafter "Gil Cabot Enterprises"), entered into a "Master Purchase Agreement" by which he sold the master recordings of the compositions and all rights attendant thereto to Jamie Record.

8. On March 19, 1969, Rendezvous/Tobac entered into a "Participation Agreement" by which it sold to Dandelion the copyrights and rights to copyright, print, publish, sell, use, or license the use of the compositions.

9. The compositions became most popular in the years 1969 and 1970 after their purchase by the defendants. "Love Can Make You Happy" was considered a "hit" during that period.

B. Relief Sought by Cabot

10. As a successor-in-interest to Gil Cabot Enterprises and Rendezvous/Tobac, Cabot now sues for rescission of the Master Purchase and Participation Agreements (together "the agreements"). A bench trial was held in this case.

11. As set forth in his second amended complaint, Cabot's principle contention is that the agreements should be rescinded and he should be allowed to recapture his copyrights and all other rights in the compositions because of failure of consideration by the defendants at the time the agreements were made.

12. Cabot further contends that an extended period of non-payment and failure to account by defendants, equivalent to Pennsylvania's four-year statute of

limitations period for breaches of contract, specifically from 1991 to 1995,[1] constituted a material breach going to the essence of the contract.

13. Cabot also asserts that royalties that were paid prior to this time were not the total of the sums due and owing to him under the agreements.

14. At trial, Cabot raised various claims for equitable relief that were not pled in his second amended complaint. Nevertheless, the court will address them briefly.

15. Cabot raised various arguments for rescission at trial based on the defendants' alleged failure to "exploit" the compositions and the Sundi label. Cabot complained that Jamie Record did not promote the compositions, in that it approached no one to secure licenses for their use in film, television, or commercials, but only issued licenses upon request.

16. First, he has asserted that the defendants had a duty to exploit the compositions and that their failure to do so amounted to failure of consideration warranting rescission. Cabot argued that exploitation of the Sundi label nationally was the main reason that he entered into the agreements with the defendants, and that he expected a more formal label distribution agreement to follow the Master Purchase Agreement. Thus, Cabot contends that the essence of the agreements was frustrated by

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[1] Under Pennsylvania law, agreements calling for performance by payment of royalties on an annual or semi-annual basis, give rise to a new cause of action for breach of contract each accounting period. See Ritter v. Pendergrass Teddy Bear, Inc., 514 A.2d 930, 935 (Pa. Super. Ct. 1986). The agreements here called for payments and accounting bi-annually.

the defendants' non-performance.

17. Second, Cabot asserted at trial that rescission was warranted, even in the absence of a duty to exploit, because the defendants failed to disclose their lack of an obligation to Cabot. Cabot claimed that the defendants knew that he expected national distribution of the Sundi label, but never disclosed to him that under the terms of the Master Purchase Agreement, Jamie/Guyden, the distribution arm, did not have such an obligation and that he was even prohibited from using the label himself. Cabot asserts that the defendants' non-disclosure was a misrepresentation amounting to fraud and justifying rescission. In the alternative, he asserts that rescission is warranted because the defendants knew of his purported mistake but proceeded to obtain a signed written agreement.

18. At trial, Cabot also raised arguments for cancellation, as an alternative to rescission, and asked the court to rescind the contracts, prospectively. He requested that the court order that the rights sold under the agreements be returned to him and that he be allowed to keep the payments and any other benefits previously received.

19. The court will not decide Cabot's request for cancellation as that theory is inherently inconsistent with the rationale underlying the concept of rescission. Moreover, the relief that Cabot seeks is not allowed under Pennsylvania law. See Sherman v. Medicine Shoppe International, Inc., 581 F. Supp. 445, 450 (E.D. Pa. 1984) (holding that Pennsylvania law does not provide for partial rescission).

C. Factual Findings

a. *The Master Purchase Agreement*

20. Under the Master Purchase Agreement ownership of the master recordings of the compositions was transferred from Cabot to Jamie Record. The Master Purchase Agreement provided in relevant part:

> (1.) This letter sets forth the agreement between you [Gil Cabot Enterprises, Inc.] and ourselves [Jamie Record], your and our heirs and distributees, successors and assigns, for the sale to us of two phonograph masters recorded by Mercy
>
> (2.) You hereby warrant and represent that you are the sole and exclusive owner of the following master recordings of: Love "Can Make You Happy" b/w Fireball [sic]
>
> . . . .
>
> . . . [S]uch masters and all records and reproductions made therefrom together with the performances embodied therein, shall be entirely our property, free of any claims whatsoever by you or any person deriving any rights or interests from you. Without limitation of the foregoing, we shall have the right to make records or other reproductions of the performances embodied in such recordings . . . and to sell and deal in the same under any trademarks or trade names or labels designated by us, and perform the same publicly and permit public performance by any method now or hereafter known throughout the world.

(Master Purchase Agreement at ¶¶ 1-2.)

21. Prior to entering into the Master Purchase Agreement, Cabot owned and distributed his recordings under the label of Sundi Record, Inc., a Florida corporation (hereinafter "Sundi Record"). At Cabot's request, a paragraph regarding distribution of the compositions on the Sundi label was inserted into the Master Purchase Agreement at

paragraph 15:

> It is understood and agreed that the above recording will be released by Jamie Record Co. on the Sundi label, with the logo 'Nationally distributed by Jamie/Guyden D. Corp.,' and you agree that we shall be exclusive distributors of all recordings on the Sundi label so long as this Agreement is in effect.

(Master Purchase Agreement at ¶ 15.)

22. The agreement between Cabot and Jamie Record with respect to the terms of distribution between Jamie Record and Jamie/Guyden was never amended.

23. The consideration paid to Gil Cabot Enterprises under the Master Purchase Agreement was a one thousand dollar ($1000) cash advance and royalties derived from the sale and/or licensing of the recordings of the compositions. (See Master Purchase Agreement at ¶¶ 4-7, 13.) Generally, Cabot was to receive a seventeen percent (17%) royalty, payable upon the wholesale price, exclusive of taxes, on ninety percent (90%) of all records sold. For sales outside of the United States, Cabot was to receive one-half of the seventeen percent (17%) otherwise payable.

24. The Master Purchase Agreement stated that Jamie Record was to provide Gil Cabot Enterprises bi-annually with an accounting and payment of net income due: "Accounts shall be made to you within sixty days after the first day of January and July of each year for the preceding six months period and shall be accompanied by payment of accrued royalties less any then unrecouped advances . . . ." (Master Purchase Agreement at ¶ 6.)

25. By a letter, dated March 4, 1969, Gil Cabot Enterprises Inc. advised Jamie Record that it had assigned its interests in the master recordings to Sundi Records.

26. The compositions were distributed with a label stating "Sundi Records nationally distributed by Jamie/Guyden" as required under the Master Purchase Agreement.

27. However, Jamie Record did not send out financial statements every six months as required. For earnings from 1972 to 1976, there were no statements issued by it until February 22, 1977.

28. Nonetheless, some payments were received, though not regularly, by Sundi Records over the years under the agreement. Between the period 1969 and 1986, Sundi Records received payments from Jamie Record amounting to approximately $52,000.

29. Jamie Record paid additional monies under the agreement to Jack Sigler, the songwriter of "Love Can Make You Happy," in compliance with a court decision in the case of <u>Sigler v. Cabot</u>, Civil Action Number 177567, before the circuit court of Hillsborough County, Florida. That court determined that Sigler had a seventy percent (70%) interest in the earnings previously owing to Gil Cabot Enterprises under the Master Purchase Agreement. These payments have continued from Jamie Records from the date of the order to the present.

30. Though statements appear in Dandelion's file after April 1, 1983,

accountings were not sent out. In October 1986, Lipsius suspended and withheld all payments to Sundi Records under the Master Purchase Agreement.

31. Lipsius discovered that Cabot had entered into an agreement to license the master recording of "Love Can Make You Happy" to another company called Collectibles, Inc. (hereinafter "Collectibles") without Jamie Records' authority or permission and, in violation of the Master Purchase Agreement. Cabot received two payments of $1,500 from Collectibles for this transaction. To date, he has not rectified this admitted breach. He has not returned to Collectibles or shared with Jamie Record the money he received.

32. At trial, Lipsius testified that he suspended payments because of Cabot's breach of contract conduct with Collectibles and because there was confusion as to who was the proper payee. Frank Edmondson, Jr. asserted a claim, and still asserts a claim to fifty percent (50%) of the royalties otherwise payable to Cabot. These reasons of Lipsius were not communicated to Cabot.

33. On July 10, 1998, this court ordered Jamie Record to pay to Cabot all sums withheld since 1986.[2] These payments have been tendered to Cabot.

[2] In 1986, Sundi Records changed its name to Sunrintine Corporation. In January 1987, the President/Secretary of Sunrintine assigned the assets back to Cabot including his interests in the master recordings. Since that time, all dealings previously done through Sundi Records or Sunrintine, have been in Cabot's name.

b. *The Participation Agreement*

34. Pursuant to the Participation Agreement, Dandelion acquired exclusive ownership of the copyrights and the right to copyright, print, publish, sell, use, or license the use of the compositions anywhere in the world. The Participation Agreement stated, in relevant part:

> (1.) [Rendezvous/Tobac] agrees and acknowledges that [Dandelion] is the sole and exclusive owner of the copyright Title: (1) "LOVE 'CAN MAKE YOU HAPPY'" (2) "FIREBALL" . . . hereinafter called the "Musical Compositions," for the territory of the World subject only to limitations thereon and the rights of the authors and/or composers set forth in an agreement between [Dandelion] and Authors & Composers . . . .
>
> (2.) [Dandelion] shall have the sole and exclusive right to print, publish, sell, use and license the use of the Musical Composition in the aforementioned territory, and to execute in its own name any and all licenses and agreements whatsoever affecting or respecting the Musical Composition, including but not limited to licenses for mechanical reproduction, public performance, synchronization uses and sub-publication. This statement of exclusive rights being in clarification and amplification of its rights as copyright owner and not in limitation thereof.

(Participation Agreement at ¶¶ 1-2.)

35. The consideration paid to Rendezvous/Tobac under the Participation Agreement was a one thousand dollar ($1000) cash advance and royalties derived from the compositions. (See Participation Agreement at ¶¶ 4-6.) Generally, Dandelion received a fee of ten percent (10%) of the total revenues. The remaining ninety percent (90%) was to be divided equally between Rendezvous/Tobac and Dandelion. (See Participation Agreement at ¶ 4.)

36. Under that agreement, Rendezvous/Tobac was also to receive direct payments from Broadcast Music, Inc. ("BMI") which was licensed to collect royalties for public performances of the compositions. (See Participation Agreement at ¶ 3, 5.) BMI was to pay a fifty percent (50%) share of any performance income to Dandelion and a fifty percent (50%) share to Rendezvous/Tobac. (See Participation Agreement at ¶ 5.)

37. The Participation Agreement stated that Dandelion was to provide Rendezvous/Tobac bi-annually with an accounting and payment of net income: "All sums payable to [Rendezvous/Tobac] pursuant hereto by [Dandelion], shall be accounted for, in writing and paid at the time of accounting, at the same time as [Dandelion] customarily accounts to authors and composers, but in no event less than twice a year." (Participation Agreement at ¶ 7.)

38. Dandelion did not send out statements every six months as required by the Participation Agreement. As with the Master Purchase Agreement, there were no statements issued to Rendezvous/Tobac from 1972 to 1976. One cumulative statement was issued in 1997.

39. Between the period 1969 and 1986, Rendezvous/Tobac received payments amounting to approximately $9,200 from Dandelion under the Participation Agreement.

40. From 1970 to the present, Cabot received payments from BMI under the Participation Agreement. From 1991 to 1995, Cabot received more that $10,500

under the Participation Agreement from BMI directly.

41. In October 1986, Dandelion decided to suspend payments due to Rendezvous/Tobac under the Participation Agreement, after it suspended the payments to Sundi Records under the Master Purchase Agreement. Accountings were also not issued during that time.

42. On July 10, 1998, this court ordered Dandelion to pay to Rendezvous/Tobac all sums withheld since 1986. Dandelion has tendered payment of those amounts but these sums have not been accepted.

D. Legal Conclusions

43. Rescission, an equitable rather than a legal remedy, “amounts to the unmaking of a contract, and is not merely a termination of the rights and obligations of the parties towards each other, but is an abrogation of all rights and responsibilities of the parties towards each other from the inception of the contract.” Metropolitan Property and Liability Insurance Co. v. Commonwealth of Pennsylvania, 509 A.2d 1346, 1348 (Pa. Commw. Ct. 1986), aff’d, 535 A.2d 588 (Pa. 1987).

44. Through equitable powers, a court may intervene to grant rescission when there are allegations of failure of consideration, fraud, and mistake. See New-Com Corp. v. Estate of James A. Gaffney, 72 B.R. 90, 94 (Bankr. W.D. Pa. 1987) (citing Windle v. Crescent Pipe Line Co., 40 A. 310 (Pa. 1898); Hays v. Hays, 36 A. 311

(1897)). Cabot has based his claim of rescission on all of these grounds.

a. *Defendant's Failure to Pay and Account*

45. This court finds that the defendants' failure to make timely and accurate payments and regular accountings does not justify rescission of the Master Purchase and Participation Agreements.

46. Not every breach of a contract justifies rescission. Under Pennsylvania law, rescission "is appropriate only under <u>extraordinary</u> <u>circumstances</u> when the complaining party has suffered a breach of such a fundamental and material nature that it affects the very essence of the contract and serves to defeat the object of the parties." <u>Castle v. Cohen</u>, 676 F. Supp. 620, 627 (E.D. Pa. 1987) (emphasis added), <u>aff'd in relevant</u>, 840 F.2d 173 (3d Cir. 1988).

47. It is well settled that an executed agreement should not be rescinded on the basis of <u>inadequate</u> consideration in the absence of fraud or mistake. <u>See</u> <u>New-Com Corp.</u>, 72 B.R. at 94 (emphasis added) (citing <u>Black v. T.M. Landis, Inc.</u>, 421 A.2d 1105 (Pa. Super. Ct. 1980); <u>Bittenbender v. Bittenbender</u>, 39 A. 838 (Pa. 1898)).

48. Rescission has been allowed in cases in which a publisher has made <u>none</u> of the royalty payments. <u>See</u>, <u>e.g.</u>, <u>Peterson v. Highland Music, Inc.</u>, 140 F.3d 1313 (9th Cir.) (granting rescission of a music contract where there was complete failure of consideration), <u>cert.</u> <u>denied</u>, 119 S. Ct. 446 (1998); <u>Oscar Barnett Foundry Co. v. Crowe</u>, 219 F. 450 (3d Cir. 1915) (granting rescission upon a finding that <u>all</u> royalty payments

under a patent agreement had ceased and that the patent was no longer being exploited as required under the contract). The rationale behind such a rescission is that "an essential objective of a contract between a composer and publisher is the payment of royalties, and a complete failure to pay means this objective has not been achieved." Nolan v. Sam Fox Publishing Co., Inc., 499 F.2d 1394, 1399 (2d. Cir. 1974);

49. Cabot cannot assert that there has been no payment whatsoever under the contract. Rather, he argues that rescission is warranted because defendants paid nothing between 1991 and 1995, the applicable statute of limitations period. Cabot argues that several other circuits have limited themselves to the statute of limitations period in evaluating whether a defendants' failure to pay and to make regular accounts warrants rescission. See, e.g., Peterson, 140 F.3d at 1321 (upholding rescission where the district court made clear that, in determining whether rescission was warranted and appropriate, it was relying upon breaches that had occurred within the statute of limitations period), cert. denied, 119 S. Ct. 446 (1998); Nolan, 499 F.2d at 1399 (1974) (finding that rescission was not appropriate as the defendant paid twenty-six percent (26%) of the royalties due within the applicable six-year statute of limitations period). Cabot has cited no cases in this circuit that stand for such proposition.

50. Nevertheless, this court finds that defendant's breaches of agreement both over the life of the agreements and during the applicable statute of limitations period, are not sufficient to warrant rescission here.

51. Between 1969 and 1986, Cabot received approximately $52,000 from defendants under the Master Purchase Agreements and $9,200 under the Participation Agreement. Further, BMI has made payments to Cabot since 1970 under the Participation Agreement. Jamie Record also paid additional consideration to Sigler pursuant to the Master Purchase Agreement.

52. Payments to Sigler from Jamie Record under the Master Purchase Agreement and to Cabot from BMI under the Participation Agreement, continued during the statute of limitations period. In fact, from 1991 to 1995 Cabot received $10,574 from BMI directly.

53. While the defendants have breached the Master Purchase and Participation Agreements by failing to make timely payments and regular accountings to Cabot, and perhaps have not fully compensated Cabot under the agreements, these breaches only amount to <u>inadequate</u> consideration and failure to comply fully with the contractual provisions.

54. It is well settled that a party may not avail itself of the equity powers of the court if there exists or existed an adequate remedy at law. <u>See</u> <u>Casey v. Philadelphia Auto Sales, Co., Inc.</u>, 236 A.2d 800, 802-802 (Pa. 1968). Here, Cabot could have been, or can be, made whole by an award of damages. In fact, the tender of payments withheld by the defendants since 1986, may have fully compensated Cabot.

55. While Cabot may be barred from receiving compensation for

breaches beyond the statute of limitations period, an adequate remedy of law did indeed exist even if Cabot failed to avail himself of it. Cabot could have demanded payment by the defendants or sought rescission through legal action when defendants' breaches first occurred. Though the defendants have made irregular payments and accountings since the agreements execution in 1969, Cabot chose not to file any legal action until December 1995.

56. To the extent that Cabot claims that an adequate remedy at law does not now exist because he cannot prove the extent of the damages owing to him as a result of defendants less than diligent accounting and the unavailability of records, his own delay in bringing legal action has contributed to, if not encouraged, this result. The passage of time has made this situation much worse as many companies with which Lipsius dealt did not keep their records or are no longer in business. Equity will not assist a party who has slept on his rights. Rarry v. Shimeck, 62 A.2d 46 (Pa. 1948). Once a party finds that rescission is appropriate, he must act promptly to notify the other party without delay, or within a reasonable time. See Fichera v. Gording, 227 A.2d 642, 644 (Pa. 1967).

57. Further, rescission is inappropriate in this case because the parties cannot be placed in their pre-contractual positions at this time, as that would mean restoring the 1969 status quo in 1997. Rescission is ordinarily granted only where the parties to the contract can be restored to substantially the same position they occupied

when the contract was made. See Id.; Sullivan v. Allegheny Ford Truck Sales, 423 A.2d 1292, 1295 (Pa. Super. Ct. 1980) (citation omitted).

58. The songs were popular primarily in 1969 and 1970. This success was due in some significant part to the efforts of the defendants. Thus, if rescission was granted, Cabot would necessarily benefit from any value that the defendants have added to the compositions, and the defendants would lose the benefit of those efforts.

b. Failure to Exploit under the Master Purchase Agreement

59. Cabot asserts that the defendants had an obligation to exploit or actively solicit and promote interest in the compositions and the Sundi label by maximizing on the past popularity of the compositions. He complains that Lipsius did not approach any companies to secure licenses for use of the compositions in film, television, or advertisements, but instead only issued licenses for the compositions upon request.

60. Jamie Record was not obligated expressly to exploit the compositions or the Sundi label under the terms of either agreement. The only terms for distribution of the compositions and the label are stated briefly in the Master Purchase Agreement at paragraph 15:

> It is understood and agreed that the above recording will be released by Jamie Record Co. on the Sundi label, with the logo 'Nationally distributed by Jamie/Guyden D. Corp.,' and you agree that we shall be exclusive distributors of all recordings on the Sundi label so long as this Agreement is in effect.

(Master Purchase Agreement at ¶ 15.) (emphasis added). No duties were imposed in the agreements regarding exploitation, or active promotion, of the compositions and label.

61. Thus, under the plain language of the Master Purchase Agreement, Jamie Record was bound only to release the compositions on the Sundi label with the described logo, and was given the exclusive right to distribute on the Sundi label. Likewise, the Participation Agreement only provided Dandelion with the "exclusive right to print, publish, sell, use and license the use of the compositions and to execute in its own name any and all licenses and agreements affecting or respecting the Musical Compositions. . .". (See Participation Agreement at ¶ 2).

62. It is well settled under Pennsylvania law that "the intent of the parties to a contract is to be regarded as being embodied in the writing itself." Steuart v. McChesney, 444 A.2d 659, 661 (Pa. 1982) (citations omitted). Where the language of a contract is clear and unambiguous, the intent is to be discovered only from the express language of the agreement and the plain meaning of the agreement will be enforced. Id.

63. While Cabot may have expected a subsequent, more formal agreement to be reached regarding distribution under the Master Purchase Agreements, such an agreement would not have altered the Master Purchase Agreements' original terms. See Id. at 662-64 (holding that under Pennsylvania law, parol evidence cannot be used to alter the plain meaning of a contract's language.).

64. Cabot asserts that even absent an explicit contractual duty, the nature of the relationship of the parties and the transfer of all title and control over the

copyrights and master recordings to Jamie Record and Dandelion, created an implied duty for them to exploit. Cabot cites second circuit cases, applying New York law, in an attempt to support his assertion that even in the absence of specific contractual language, the defendants had an implied duty to exploit the compositions and actively to promote distribution of the Sundi label. See In re Waterson, Berlin & Snyder Co. v. Irving Trust Co., 48 F.2d 704, 710 (2d Cir. 1931); Zilg v. Prentice-Hall, Inc., 717 F.2d 671 (2d Cir. 1983).

65. The above cases do not stand for the proposition for which Cabot has cited them. At best, the second circuit cases hold that a publisher, holding exclusive rights in a work, has an implied duty to exercise good faith and sound business judgment in working a copyright. Those cases do not stand for the proposition that there is an implied duty to exploit a copyright in the manner that Cabot urged, and that a publisher is obligated to promote the work regardless of circumstances, costs, or other conditions that might erode popularity, such as the passage of time and change in consumer taste.

66. A publisher is obligated to do only that which is reasonably practicable. See, e.g., In re Waterson, Berlin & Snyder Co., 48 F.2d at 711 (finding that the rights of a composer were satisfied subject to the obligation of the copyright holder "to work any copyright that may be sold, so far as may be reasonably practicable"); Zilg, 717 F.2d at 681 (finding that "[s]o long as the initial promotional efforts are adequate . . . a publisher's printing and advertising decisions do not breach a contract . . . unless the

plaintiff proves that the motivation underlying those decisions was not a good faith business judgment."); see also USX Corp v. Prime Leasing Inc., 988 F.2d 433, 438 (3d Cir. 1993) ("The covenant of good faith and fair dealing 'involve[s] an implied duty to bring about a condition or to exercise discretion in a reasonable way.'") (citation omitted).

67. Further, to impose or assume an affirmative duty on the defendants to exploit, would be inconsistent with the agreements' express language and, therefore, contrary to Pennsylvania law. Because the agreements clearly set forth the limits of the defendants' obligations, that is to release compositions on the Sundi label and to execute licenses, a duty to exploit cannot be implied in expansion of those obligations. See id. at 439 ("'The law will imply a term only for omitted covenants. There can be no implied covenant as to any matter specifically covered by the written contract between the parties.'") (quoting Reading Terminal Merchants Ass'n v. Samuel Rappaport Assocs., 456 A.2d 552, 557 (Pa. Super. Ct. 1983)).

68. Even if this court were to hold that the defendants had an implied duty to work the copyrights in good faith and with reasonable business judgment, the evidence produced at trial has not proven that they failed to do so. The evidence only shows that the defendants did not continually and aggressively promote the compositions and the Sundi label on which they were to be released after the songs ceased being current hits. The record shows that the defendants rode the wave of the compositions' initial popularity, and did expend money to produce records and work the copyrights at that

opportunistic time.

69. Cabot has failed to show that promotion of the compositions and national distribution of the Sundi label would have been a success, or that there would have been a restoration of the compositions' popularity. Further, the evidence does not show that the defendants missed viable business opportunities. Cabot's theories of promotion amount to no more than speculation as to what promotion might have produced and do not constitute proof that there was a departure from good business judgment.

70. Cabot's assertions for rescission, based on the defendants' purported fraud and/or Cabot's purported unilateral mistake, fail because the information that he asserts that Lipsius never disclosed to him was either set forth plainly in the agreements or clearly not included. Indeed, the only paragraph addressing distribution of the compositions on the Sundi label was typed into the Master Purchase Agreement at Cabot's request, and that agreement was signed by Cabot.

71. Under Pennsylvania law, in the absence of fraud, any failure by Cabot to read and understand the agreement before signing it does not justify relief from its terms:

> A person of legal age is presumed to know the meaning of words in a contract, and if, relying on his own ability, he enters into an agreement not in his best interest he cannot later be heard that he was not acquainted with the meaning of the words used in the instrument that he signed.

<u>Brookers Title Co., Inc. v. St. Paul Fire & Marine Insurance Co.</u>, 610 F.2d 1174, 1180-81

(3d Cir. 1979) (citing Schoble v. Schoble, 37 A.2d 604, 605 (1944)).

72. The Master Purchase Agreement unambiguously stated that Jamie Record would receive the exclusive right to distribute on the Sundi label. Further, neither that agreement nor the Participation Agreement set forth any obligation on Jamie Record's part to promote actively the past popularity of the compositions or the Sundi label.

E. Conclusion

73. Cabot's claim for rescission of the Master Purchase Agreement and Participation Agreement is denied. This court finds that the defendants' actions in failing to make timely payments and regular accountings does not rise to a level that warrants rescission under the facts presented. Further, Cabot's claim of rescission, based on the defendants' alleged failure to exploit the compositions, fails because the court finds that the defendants did not have a duty to exploit in the manner that Cabot described.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GILBERT A. CABOT	:	CIVIL ACTION
	:	
v.	:	
	:	
JAMIE RECORD COMPANY, et al.	:	NO. 96-4672

JUDGMENT ORDER

AND NOW, this day of April 1999, in accordance with the court's findings of fact and conclusions of law, it is hereby ORDERED that Judgment is entered in favor of defendants, Jamie Record Co. and Jamie Music Publishing Co. t/a Dandelion Music Co., and against plaintiff, Gilbert A. Cabot.

BY THE COURT:

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JAMES T. GILES, C. J.