

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

.....  
HAROLD WEISBERG,  
Plaintiff,  
v.  
DIMONDSTEIN BOOK COMPANY, INC.  
Defendant  
.....

INDEX NO.  
VERIFIED COMPLAINT

Plaintiff, by James Hiram Lesar, his attorney, respectfully  
alleges:

AS AND FOR A FIRST CAUSE OF  
ACTION, ON AN ACCOUNT STATED:

1. Plaintiff Harold Weisberg resides at Route 12, Frederick, Maryland. At all times relevant to this complaint he has been a resident of the State of Maryland.

2. Defendant Dimondstein Book Company, Inc. ("Dimondstein") is now, and at all times relevant to this complaint has been, a New York corporation with its principal offices located in New Rochelle, New York.

3. This Court has jurisdiction over this action. McKinney's Judiciary Law, §140-b. Constitution of the State of New York, Article 6, Section 7.

4. On June 6, 1966, and dates subsequent thereto, defendant Dimondstein became indebted to plaintiff upon a balance of account for goods sold and delivered.

5. On or about May 17, 1971, Dimondstein requested that plaintiff furnish a current statement of account.

6. On or about July 18, 1971, plaintiff mailed an itemized statement of account to Dimondstein. Dimondstein received said statement of account and accepted the same and has ever since retained it without making any objection thereto or to any item thereof.

7. On the basis of information then available to plaintiff, said statement was a just and true account and an accurate statement showing the full amount of goods sold and delivered to the defendant by the plaintiff as of that date.

8. Said statement of account showed a balance of \$3,962.71 due to plaintiff from Dimondstein over and above all sums received from Dimondstein and for which Dimondstein was entitled to credit. A copy of said statement of account is attached hereto as Plaintiff's Exhibit 1.

9. By reason of the failure of Dimondstein to pay the account stated, plaintiff was damaged in the amount of \$3,962.71, plus interest.

AS AND FOR A SECOND CAUSE OF  
ACTION, FOR BREACH OF CONTRACT:

10. Plaintiff repeats and realleges each and every allegation contained in paragraphs one through eight of the complaint, inclusive, and incorporates each herein.

11. Dimondstein agreed to buy the goods delivered to it which are reflected on the itemized account which is attached hereto as Plaintiff's Exhibit 1.

12. Dimondstein breached this contractual agreement by failing to pay for the \$3,962.71 worth of goods listed on Plaintiff's Exhibit 1.

13. On or about August 17, 1968, Dimondstein received a shipment of 1,000 books which is not reflected on the statement of account which is attached hereto as Plaintiff's Exhibit 1. This shipment of 1,000 books was shipped by the printer by mistake to Bookazine, a New York distributor, which then turned the shipment over to Dimondstein. Plaintiff mistakenly billed Bookazine rather than Dimondstein.

14. Dimondstein further breached its contract with plaintiff by failing to pay him the \$2,475.00 it owed for the shipment of 1,000 books which it received through Bookazine.

15. As a result of the foregoing breaches, plaintiff was damaged in the amount of \$6,437.71, plus interest.

AS AND FOR A THIRD CAUSE OF ACTION, FRAUD:

16. Plaintiff repeats and realleges each and every allegation contained in paragraphs one through fifteen of the complaint, inclusive, and incorporates each herein.

17. Dimondstein intentionally and fraudulently concealed from plaintiff the fact that it had received a shipment of 1,000 of his books on or about August 17, 1968.

18. As a consequence of this fraud, plaintiff mistakenly billed Bookazine, which had had the books mistakenly shipped to it delivered to Dimondstein.

19. As a further consequence of Dimondstein's concealment of the fact that it had received this shipment of 1,000 books, plaintiff did not learn of it until 1973.

20. Although plaintiff has demanded that Dimondstein pay him for the shipment of 1,000 books which it received on or about August 17, 1968, Dimondstein has failed to do so.

21. As the result of Dimondstein's fraudulent concealment and failure to pay for this shipment of books, plaintiff was damaged in the amount of \$2,475.00, plus interest.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

1. On the first cause of action, for the sum of \$3,962.71, plus interest; and
2. On the third cause of action, for the sum of \$2,475.00,

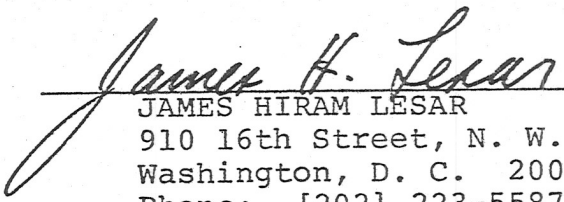
plus interest: or

3. In the alternative, on the second cause of action, for the sum of \$2,475.00, plus interest;

4. Punitive damages in the amount of \$5,000 for fraudulently concealing the fact that defendant owed plaintiff the additional sum of \$2,475.00 for goods delivered to it but mistakenly routed through another distributor;

5. For the costs and disbursements of this action, including reasonable attorney fees.

DATED: February 23, 1977

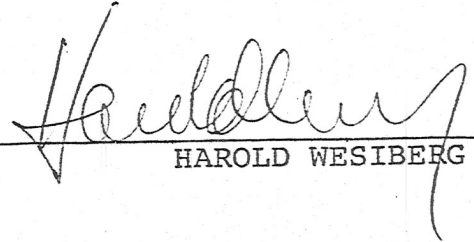
  
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 Phone: [202] 223-5587

Attorney for Plaintiff

V E R I F I C A T I O N

DISTRICT OF COLUMBIA

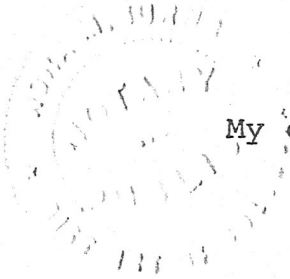
Harold Weisberg, being first duly sworn on oath says that he has read the foregoing Complaint, that to the best of his knowledge and belief the allegations made therein are true, and that said Complaint is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

  
 HAROLD WEISBERG

Subscribed and sworn to before me this 23rd day of February,  
1977.

*Don M. Susus*  
NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA

My commission expires *December 14, 1981*.



July 18, 1971

STATEMENT OF ACCOUNT

Dimondstein Book Co., Inc.  
38 Portman Road  
New Rochelle, N. Y.

1966:

June 6	500 copies WHITEWASH - 4.95 less 50%	1,237.50	
July 5	500 " "	1,237.50	2,475.00
23	credit - check	500.00	
29	500 Copies WHITEWASH	1,237.50	3,212.50
Aug. 15	credit - check	737.50	
30	" "	737.50	
	" 120 books not rec'd	297.00	1,440.50
Sep. 15	1000 copies WHITEWASH	2,475.00	3,915.50
Oct. 4	Credit - check	500.00	3,415.50
Dec. 5	" "	940.50	2,475.00

1967:

Jan.	1000 copies WWII	2,475.00	4,950.00
July	500 @ " PHOTOGRAPHIC WW	1,237.50	6,187.50
Sept.	credit - returns	2217.60	3,969.90

1968:

credit - returns	14.85	3,955.05
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1969:

Jan.	1 copy WHITEWASH - PO#135	3.83	3,958.88
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1970:

Aug.	1 copy WW - PO#3930	3.83	3,962.71
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Balance due	-----	4,962.71
		3962.71