SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PHILIPPE CAHEN; SUMMIT CAPITAL HOLDINGS SA; and CONTINENTAL FINANCE GROUP SA, Plaintiffs, - against - CHARLES GREGOIRE DE ROTHSCHILD, Defendant.	Index No. 652417/2011 Motion Sequence #003

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT

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Plaintiffs Philippe Cahen ("Cahen"), Summit Capital Holdings S.A. ("Summit Capital") and Continental Finance Group S.A. (collectively the "Summit Capital Plaintiffs" or "Plaintiffs") submit this Memorandum of Law, in support of their motion under CPLR § 3212, for the Court to grant summary judgment and dismiss defendant Gregoire de Rothschild's ("de Rothschild") counterclaim and to grant judgment in favor of the Plaintiffs on all counts of their complaint seeking declaratory relief.

PRELIMINARY STATEMENT

The crux of this dispute is de Rothschild's claim that he made an oral agreement with Cahen in 2004 whereby he would be paid 1 Million Euros and 26% of Summit Capital to become a director of Summit Capital. De Rothschild first raised the purported "oral agreement" claim in 2011 when he hired – and fired - two different lawyers to send demand letters to Cahen and Summit Capital. After the Plaintiffs filed a Complaint seeking declaratory relief, de Rothschild then hired a third law firm to file his Answer and Counterclaim – and then proceeded to fire that law firm and continue *pro se* in this litigation.

Over the course of this lawsuit, de Rothschild has continued to change his story about the supposed "oral agreement." Indeed, de Rothschild completely abandoned the allegations made by his first two lawyers in their demand letters when it was revealed that he was not a member of the prestigious Rothschild banking family. Despite the fact that his membership in the Rothschild banking family was the basis of the purported agreement, de Rothschild vehemently denied the allegations of one of his own demand letters during his deposition by attacking his former attorney as a "liar" and a "completely stupid old man." Even after his third law firm filed a counter claim setting forth the precise details of the supposed oral agreement, de Rothschild continued to change his story about the basic terms of the alleged oral agreement set forth in the counterclaim, such as the compensation to be paid and the purpose of the agreement.

Putting aside de Rothschild's increasingly bizarre attempts to fabricate new or different details about the purported oral agreement, it has become clear that not a shred of evidence exists to support his tale of the supposed "oral agreement" other than his own ever-changing allegations. Regardless of how de Rothschild's story continues to evolve, his contention that Plaintiffs breached this purported oral agreement cannot survive because it is barred by (i) the statute of limitations under CPLR § 213 and/or (ii) the Statute of Frauds pursuant to N.Y. Gen Oblig. Law § 5-701(a).

Moreover, and perhaps more importantly, de Rothschild's testimony and other sworn statements make it clear that no valid and enforceable contract under New York law existed here. First, based on de Rothschild's own testimony, no "meeting of the minds" occurred between the parties because the contract failed in its essential purpose -- given that de Rothschild is not a member of the Rothschild banking family. Second, de Rothschild's inconsistent and contradictory testimony regarding the core terms of the agreement, such as compensation, demonstrate that the supposed agreement does not have definite and enforceable terms. Third, even if the Court ignored all of the legal and logical deficiencies of de Rothschild's claim, the alleged agreement would constitute an illegal contract entered into for fraudulent purposes that is unenforceable under New York law[1]

STATEMENT OF FACTS

De Rothschild served as an uncompensated member of the Board of Directors of Plaintiff Summit Capital Holdings for two years, starting on July 26, 2004. (Ex. D) None of the Summit Capital Directors have ever been compensated. (Ex. E ¶ 7) This fact is consistent with the

[1] In support of Plaintiffs' Motion for Summary Judgment, Plaintiffs have also submitted the accompanying Statement of Undisputed Material Facts and the April 4, 2013 Affirmation of Joseph E. Czerniawski with exhibits thereto ("Czerniawski Dec., Ex. ___"). All references to Exhibits herein are to those Exhibits attached to the April 4, 2013 Czerniawski Affirmation.

general practice in Luxembourg, in which there is no compensation for such services unless there is a specific agreement to the contrary. (Ex. H) The Summit Capital Plaintiffs contend in this litigation that de Rothschild only became a member of its Board by intimating that he was a member of the famed European "Rothschild" banking family and that, through his background, he could introduce Summit Capital to many of his "business contacts." (Ex. E ¶ 1 & 5th Aff Def.) In fact, Mr. de Rothschild never provided any business contacts or serious business proposals of any type. (Ex. E ¶ 6) De Rothschild never attended any Summit Capital Board meetings or provided any useful contribution during his two years of service on the Summit Capital Board. (Ex. B at 115-118) Nor did he ever invest any money or make any other type of equity contribution to Summit Capital. (Ex. B at 234) In sum, de Rothschild's sole "contribution" to Summit Capital was signing a few Board resolutions sent to him via overnight mail over a period of two years. (Ex. E ¶¶ 1-6) After two years of de Rothschild essentially doing nothing and providing no useful contribution or business proposal for Summit Capital, de Rothschild was removed from its Board of Directors on April 27, 2006. (Ex. D)

Seven years after joining the Summit Board of Directors, de Rothschild retained at least two different attorneys in 2011 to write letters claiming that he and Cahen entered into a purported "oral agreement" prior to de Rothschild joining the Board on July 26, 2004. (Ex. F.) Through these demand letters, de Rothschild alleged that he "contributed his name and reputation" to Summit Capital and that he is "well known in Europe and Russia" with a family that has been in the financial business "for about five centuries." Ex. F. According to de Rothschild's counterclaim, Cahen allegedly agreed that de Rothschild would be paid One Million Euros and 26% of the equity in Summit Capital to join the Summit Capital Board of Directors. (Ex. A, ¶ 27). De Rothschild also testified that Cahen promised to provide this

compensation to him at 12,000 Euros per month because "he was born on February 12." (Ex. B at 102, 104).

After receiving letters from de Rothschild's various attorneys regarding the purported "oral agreement," the Summit Capital Plaintiffs conducted an investigation into Mr. de Rothschild, only to discover that Mr. de Rothschild is not a "Rothschild" at all. In fact, as Mr. de Rothschild has now admitted, his real name is Aaron Joab Berdah. (Ex. B at 16) After emigrating to the United States from Tunisia, Mr. Berdah changed his name to "Charles Gregoire Rothschild." (Ex. B at 24-25)[2] Regardless of how many times de Rothschild alters his name, the basis of his allegations and the details of the agreement, it remains the case that there is not a shred of evidence to support his fantastical story other than his own contradictory testimony. Indeed, de Rothschild has admitted as much in document responses that he submitted to the Court. (Ex. G at ¶¶ 8, 12)

De Rothschild's testimony about the purpose and details of this supposed "oral agreement" with Cahen became even more fantastical and bizarre after the revelation that he is not a Rothschild family member. For instance, de Rothschild testified at his deposition multiple times that he (i) stated to Cahen at the outset that he was not a Rothschild family member (Ex. B at 72-73) and (ii) does not hold himself out as a member of the Rothschild family. (Ex. B at 159; 242-43) Moreover, de Rothschild testified that Cahen was not authorized to represent him as a Rothschild and it would be fraudulent for him to do so. (Ex. B at 242-45; 255)

Yet de Rothschild also testified the "primary reason" that Cahen agreed to compensate him for serving on the Summit Capital Board was so that de Rothschild would save Cahen from assassination from the Russian mafia and Russian criminals. (Ex. B at 23; 271-73) However, de

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[2] Mr. Berdah later changed his name again to "Charles Gregoire de Rothschild." De is a preposition in the French language typically meaning "belonging to" or "from" as in origin.

Rothschild is not a bodyguard nor is there even evidence that de Rothschild has ever traveled to Russia. According to de Rothschild, Cahen hired him because the Russian mafia would not assassinate Cahen when a Rothschild family member was on the Summit Capital Board of Directors. (Ex. B at 274-75) Similarly, de Rothschild testified the other reason for the oral agreement was that de Rothschild would attract $30 Million in financing from Thames River Apex Capital Fund for a Summit Capital subsidiary, Dalminer Finance S.A. (Ex. B at 80) Yet de Rothschild could not identify a single person that he knew at the Thames River Fund nor could he testify that he attended a single meeting or made any other contact with anyone at Thames River. (Ex. B at 146; 150-52) Rather, de Rothschild claimed responsibility for raising $30 Million in financing from Thames River based on his "speculation" that Cahen told Thames River that a Rothschild family member was on the Summit Capital Board of Directors. (Ex. B at 150-156) In fact, de Rothschild testified that "one of the main reasons" Cahen hired him was to pass him off as a Rothschild family member. (Ex. B at 194; 238)

Thus, de Rothschild's testimony and other sworn statement demonstrate that the entire purpose of this supposed oral agreement requires de Rothschild to ***actually be a Rothschild family member*** – while he simultaneously testified that he does not hold himself out as such and told Cahen that he was not a Rothschild family member and could not be represented as such. Besides having nothing in the form of any documentary evidence to support his wild allegations, de Rothschild's story simply falls apart on its face because it is inherently contradictory. In fact, many other details of de Rothschild's supposed "oral agreement", only serve to demonstrate that no enforceable, valid agreement could exist. For instance,

- After sending multiple letters and filing a counterclaim alleging that the agreement was for One Million Euros, de Rothschild suddenly testified at his deposition that the agreement was for Two Million Euros (Ex. B at 86);

- That Cahen also promised him monthly payments of 12,000 Euros arrangement because he was born on February 12 – and that "the country of Israel trusts me for the balance." (Ex. B at 102, 104) – but yet later testified that the 12,000 Euros was not a "bona fide agreement." (Ex. B at 108);

- That he has no claim for reimbursement of business expenses in this lawsuit because he "was above these things" and "I don't want to be paid $1,000, $5,000. I want to be paid the big money." (Ex. B at 118). This is despite the fact that his counterclaim specifically alleges Summit Capital failed to reimburse him for business expenses. (Ex. A ¶ 30)

Given that his story about the oral agreement is inherently contradictory and nonsensical, it is no surprise that de Rothschild's testimony is littered with undecipherable stories. For instance, Rothschild testified:

- He changed his name from Aaron Berdah to de Rothschild "to clean the bad karma of the Jews" () because "the Rothschilds caused the Holocaust" because they "financed Napolean's enemies." (Ex. B at 30,33);

- That it is "a mystery" to him whether or not he is a Rothschild family member and that he considers himself "the black sheep" of the Rothschilds. (Ex. B at 40);

- That his plan "before I die is to make the peace between the Jews and the Arabs and the Christians . . . [t]o prove that the Rothschilds are the cause of all of the problems." (Ex. B at 43-44);

- That if a Rothschild family member comes to Paris, "he will be assassinated because they finance Israel." (Ex. B at 61);

- That he could not reveal any sources of financing that he provided to Summit Capital because he was bound to a pledge of secrecy on the Torah. (Ex. B at 142-143);

- That if he and Cahen were ever physically present together, "we are both dead by the Russian mob" and "there was a contract against [Cahen] to be assassinated" . . . because "he got MTV, new hot American thing." (Ex. B at 94);

- That he is sleeping "directly or indirectly" with Pamela Anderson. (Ex. B at 139);

- That he has no documents to support any of his allegations because his ex-girlfriend (not Pamela Anderson) "disappeared" with a box in which there were "a lot of documents." (Ex. B at 216);

- That he is being "blackmailed" by a "double or triple" Arab spy. (Ex. B at 298);

- That he will be creating a "national monument" to Napolean Bonaparte to clean the "bad karma" of the Rothschild family. (Ex. B at 308-09).

ARGUMENT

Summary judgment is appropriate pursuant to CPLR 3212 when the documentary and other proof submitted demonstrates that the Court ought to enter judgment in favor of a party as a matter of law. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). This relief is available both to plaintiffs and defendants when the evidence demonstrates that judgment should be granted as a matter of law. Heath v. Liberato, 82 A.D.3d 841 (2d Dep't 2011). In this case, summary judgment in favor of all of the plaintiffs' claims for declaratory judgment and dismissing the defendant's counterclaim is appropriate. De Rothschild's unsupported contention that he is entitled to compensation based on an "oral agreement" with Cahen in Brussels in 2004 is barred both by the Statute of Limitations and the Statute of Frauds in New York. Moreover, de Rothschild's own testimony demonstrates that no valid and enforceable agreement could have been formed here under New York law. First, no possible "meeting of the minds" could have occurred here given de Rothschild's testimony and acknowledgment that he is not a member of the Rothschild banking family. Second, de Rothschild's contradictory testimony regarding the essential terms of the agreement demonstrates the purported "oral agreement" does not have valid and enforceable terms. Finally, based on de Rothschild's own testimony, the purported agreement would be an illegal contract made for fraudulent purposes and thus unenforceable under New York law.

I. THE STATUTE OF LIMITATIONS BARS ENFORCEMENT OF DE ROTHSCHILD'S ALLEGED ORAL AGREEMENT

CPLR § 213 provides that a lawsuit based upon a contractual obligation or liability must be commenced within 6 years. The New York Court of Appeals has made it clear that the time period for the statute of limitations begins to run as soon as the breach of the contract occurs.

Kassner & Co. v. City of New York, 46 N.Y.2d 544, 550 (1979). De Rothschild became a director of Summit Capital on July 26, 2004 (Ex. A at ¶ 27) According to de Rothschild's counterclaim and other sworn representations to the Court, Cahen made an "oral agreement" with him prior to that date to pay him 1 Million Euros and 26% of the share of Summit Capital in order to induce him to join the Summit Capital Board. (Ex. A at ¶ 12) De Rothschild further testified that this agreement was actually made when he met Cahen for the first time in Brussels (Ex B at 81-86). Moreover, de Rothschild testified that Cahen was to provide this compensation to him at 12,000 Euros per month because "he was born on February 12." (Ex. B at 83) Cahen and de Rothschild's personal meeting then occurred at some time during January or February of 2004, based on subsequent emails. At any rate, it cannot be disputed that de Rothschild's own testimony is that the "oral agreement" occurred several months prior to de Rothschild joining the Summit Board in July of 2004. (Ex. B at 85)

It is also undisputed that the Summit Capital Plaintiffs have never paid de Rothschild 12,000 Euros a month or made any payment to de Rothschild before or after he joined the Summit Board. This is because the "oral agreement," like much of de Rothschild's testimony and his surname, is pure fiction. For purposes of this motion, if the Court accepts de Rothschild's allegations in his counterclaim and testimony as true, the Summit Capital Plaintiffs have been in breach of the supposed "oral agreement" with de Rothschild since at least July 2004, when he joined the Summit Capital Board of Directors. The Summit Capital Plaintiffs filed this lawsuit at the end of August 2011 and de Rothschild filed his counterclaim on October 6, 2011. Therefore, Plaintiffs seek that the Court grant the summary judgment on their first cause of action seeking a declaratory judgment that the New York statute of limitations bars

de Rothschild's attempt to enforce the supposed "oral agreement." Plaintiffs also seek the Court to grant summary judgment dismissing de Rothschild's counterclaim on the same basis.

II. THE STATUTE OF FRAUDS ALSO BARS ENFORCEMENT OF DE ROTHSCHILD'S CLAIM

At the outset of this case, de Rothschild's multiple letters from various attorneys appeared to allege that he was entitled to a "finder's fee" as compensation under the alleged oral agreement with Cahen for introducing contacts or new business to Summit Capital. Such a claim for a "finder's fee" based on an oral agreement is explicitly barred under the New York Statute of Frauds. N.Y. Gen. Oblig. Law § 5-701(a)(10). For this reason, the Summit Capital Plaintiffs sought as Count II of their complaint a declaratory judgment that any such claim was barred by the Statute of Frauds. However, de Rothschild has now specifically denied that he has any claim for a finder's fee multiple times at his deposition. (Ex. B at 127).

Through his ever evolving story about the supposed "oral agreement," de Rothschild now appears to claim that the alleged compensation was purely for him to join and serve on the Summit Capital Board of Directors. This oral agreement still cannot be enforced under the Statute of Frauds. First, de Rothschild testified that the main purpose of the oral agreement is that de Rothschild was hired to serve on the Board so as to "attract the money." (Ex. B at 80). In particular, de Rothschild testified that he was retained to serve on the Board in order to obtain the $30 Million in financing for Dalminer Finance, S.A. as well as alleging that he introduced several other valuable "contacts" to Mr. Cahen. Ex. B at 145-48; 200-05. Agreements for the purpose of compensation for the introduction of business contacts or business opportunities are still covered by the express language of N.Y. Gen. Oblig. § 5-701(a)(10). Moreover, based on de Rothschild's own testimony regarding the terms of his oral agreement and his manner of compensation, the required performance under this agreement by both sides could not performed

within one year so as to take it outside the Statute of Frauds. For instance, the documentary evidence demonstrates that de Rothschild was appointed to the Board in July of 2004 and reappointed to a six year term on June 27, 2005. Ex. E. Thus, based on de Rothschild's own story, he needed to serve as a Director until 2012 in order to entitle him to the full compensation under the agreement. Thus, de Rothschild could not perform his obligations under the agreement within a year. See D&N Boening v. Kirch Beverages, 99 A.D.2d 522, 523 (2d Dep't 1984) (holding service of employment contract unenforceable under the Statute of Frauds when, by its terms, it could not be performed within one year). Similarly, de Rothschild testified that his compensation would be paid 12,000 Euros a month --- and thus Summit Capital also could not perform its compensation obligations under the agreement within one year to pay de Rothschild the alleged compensation of One Million Euros. Thus, the Court should additionally grant summary judgment against de Rothschild's counterclaim as it is barred by the Statute of Frauds. See Aquavella v. Viola, 79 A.D.3d 1590, 1592-93 (4th Dep't 2010) (oral agreement unenforceable when one of alleged crucial terms could only be performed over a two year period).

III. NO VALID AND ENFORCEABLE CONTRACT COULD HAVE BEEN FORMED UNDER NEW YORK LAW

In order to show that a valid contract exists under New York law, it must be established that "a meeting of the minds occurred" as to the terms of such an agreement and its essential purpose. Benicorp Ins. Co. v. Nat'l Med. Health Card Sys., Inc., 447 F. Supp.2d 329, 337 (S.D.N.Y. 2006). Such an agreement regarding compensation for employment must also have definite and certain terms so as to be valid and enforceable. "If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract." Cobble Hill Nursing Home Inc. v. Henry & Warren Corp., 74 NY.2d 475, 482 (1988). Moreover, even if the criteria

above are met, New York courts do not enforce illegal contracts, particularly those entered into for fraudulent purposes. Yao v. Bult, 245 A.D.2d 136 (1st Dep't 1997). Here, Mr. de Rothschild's own sworn statements and testimony illustrate that his story about the supposed "oral agreement" could not possibly amount to a valid and enforceable contract under New York law.

A. NO MEETING OF THE MINDS CAN BE ESTABLISHED

De Rothschild's increasingly fantastical and bizarre testimony regarding the essential purpose and terms of the alleged oral agreement demonstrate that no "meeting of the minds" could have occurred. First, it should be noted that not a shred of documentation or evidence exists that would even reflect such an agreement, other than de Rothschild's own self-contradictory testimony seven years after the fact. But, even if the Court completely credited de Rothschild's bizarre stories, his testimony about the meaning and purpose of the agreement demonstrate that no "meeting of the minds" could have occurred.

De Rothschild testified that the "main" and "most important" reasons for which he would be paid One Million Euros to serve on the Summit Board of Directors were twofold. First, de Rothschild would save Cahen "from assassination by "the Russian Mafia and Russian criminals." (Ex. B at 284) De Rothschild would perform this task because his mere presence, as a Rothschild family member, on the Summit Board would deter the Russian Mafia from assassinating Cahen. (Ex. B at 274-75) Second, de Rothschild testified that the other important reason for his retention was to attract $30 Million in financing from Thames River Apex Capital Fund – an investment fund with whom de Rothschild did not have a single meeting or could even identify a single person. According to de Rothschild, he would attract the financing simply because of his presence on the Summit Board as a Rothschild family member. (Ex. B at 150-56) Thus, the "essential purpose" of this supposed oral agreement required de Rothschild ***to actually***

be a Rothschild family member. Yet de Rothschild testified that he is not a Rothschild family member (Ex. B at 242-43) and stated to Cahen at the outset that he was not a Rothschild family member. (Ex. B at 159; 72-73) Moreover, de Rothschild testified that Cahen was not authorized to represent that he was a Rothschild family member and it would be fraudulent for Cahen to do so. (Ex. B at 242-45; 255). In short, based on de Rothschild's own testimony, no "meeting of the minds" occurred in order to form a valid contract because de Rothschild was unable fulfilled the essential and intended purpose of the contract intended by the parties. Central Federal Savings v. Nat. Westminster Bank, 176 A.D.2d 131, 133 (1st Dep't 1991) (affirming summary judgment when no meeting of minds could be established to form contract). Thus, no meeting of the minds occurred because de Rothschild could not perform what he claims Cahen retained his services for and thus the contract failed in its essential purpose.

B. THE SUPPOSED "ORAL AGREEMENT" DOES NOT HAVE DEFINITE AND ENFORCEABLE TERMS

Putting aside the fact that no meeting of the minds could possibly have occurred here, de Rothschild's ever changing story regarding the basic terms of the oral agreement demonstrate that the terms of this supposed agreement are not definite and enforceable. De Rothschild contradicted himself as to the core terms regarding his compensation under this supposed oral agreement. For instance, after several letters (Ex. F), the counterclaim (Ex. A ¶ 27) and de Rothschild's own sworn statements to the Court (Ex. G, ¶ 12) alleged that he was owed One Million Euros, de Rothschild suddenly changed his story at his deposition and claimed that he was owed Two Million Euros. (Ex. B at 78, 101, 107) Similarly, de Rothschild appeared to testify that this compensation was to be paid at a rate of 12,000 Euros a month, while admitting it was "not firm" or unclear. (Ex. B at 104-05, 108, 136). Even though the entire point of the dispute is de Rothschild's claim of an alleged oral agreement to be compensated to serve on the

Summit Capital Board, de Rothschild does not even have a consistent and coherent story about the compensation that he is owed.

This is certainly not surprising as de Rothschild has abandoned the very core of his allegations regarding the agreements asserted by his first two lawyers in de Rothschild's demand letters sent in 2011. In his first letter, de Rothschild demanded compensation because he "contributed his ***name***, time and advice" to Summit Capital. (Ex. F) Yet, once it was revealed that "de Rothschilds" name is fake and he did absolutely nothing other than sign a few Board resolutions (without attending the Board meetings), he reverted to his new story that he was only to serve on the Board using a "Rothschild" name. (Ex. B at 128). Similarly, de Rothschild's second attorney asserted that de Rothschild "doesn't lend his name or reputation for free." (Ex. F) In support, de Rothschild further asserted that "his family has been in the [financial] business for five centuries and is "well known in Europe and Russia." (Ex. F) Of course, now that the Summit Capital Plaintiffs have learned that de Rothschild is really Aaron Joab Berdah, de Rothschild has abandoned his claim that he was to be compensated because of the use of his "prestigious" name. De Rothschild cannot simply keep changing his story about the basic purpose and terms of the agreement as it suit his current purposes. De Rothschild's supposed oral agreement, by his own testimony, simply fails to have definite and enforceable terms. Kensington Court Assocs. v. Gullo as Executrix of Woodrow Beadregard, 180 A.D.2d 888, 889 (3d Dep't 1992) (affirming finding there was no legally enforceable contract where the compensation owed was not reasonably certain).

C. DE ROTHSCHILD'S SUPPOSED "ORAL AGREEMENT" IS AN ILLEGAL CONTRACT AND THUS UNENFORCEABLE

Putting aside all of the above issues, de Rothschild's testimony relating to the supposed oral agreement establishes that the supposed contract was entered into for fraudulent purposes

and, thus, unenforceable as a matter of law. Lothar's of Cal. v. Weintraub, 158 Misc.2d 460, 463 (Sup. Ct. N.Y. Cty. 1993); Segrete v. Zimmerman, 67 A.D.2d 999, 1000 (2d Dep't 1979) (upholding ruling declining to enforce illegal contract). De Rothschild testified that he is not and does not hold himself out as a member of the prestigious Rothschild banking family (Ex. B at 72-73) and that it would be fraudulent for Cahen to make those representations regarding de Rothschild. (Ex. B at 242-45; 255) Yet, at the same time, De Rothschild testified that the main purpose of the agreement involved Cahen making false representations to others that a Rothschild family member was on the Summit Capital Board of Directors. Indeed, de Rothschild testified that "one of the main reasons" that Cahen hired him was to pass him off as a Rothschild family member. (Ex. B at 194; 238) In essence, now that de Rothschild has admitted that he is not a member of the Rothschild banking family, the basis of the supposed agreement is one which involves Cahen falsely representing to others that a Rothschild family member is on the Summit Capital board, using de Rothschild's fictitious sur-name. Thus, the supposed oral contract, as described by de Rothschild, is a classic example of a contract made for illegal and fraudulent purposes and thus unenforceable under New York law. Yao v. Bult, 245 A.D.2d 136, (1st Dep't 1997) (upholding dismissal of complaint which sought to enforce illegal contract). Moreover, de Rothschild would be barred from attempting to enforce or collect benefits from such an illegal or fraudulent conspiracy under the doctrine of unclean hands.[3] See Smith v. Lang, 281 A.D.2d 897, 898 (1st Dep't 2001).

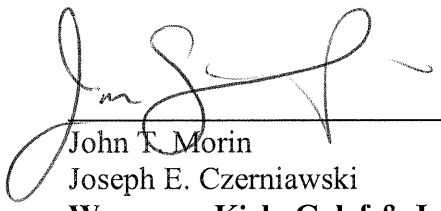
[3] The Summit Capital Plaintiffs vehemently deny any such illegal or fraudulent conspiracy existed – in fact, it was the Summit Capital Plaintiffs who were taken advantage of by de Rothschild's fraudulent posturing as a member of the Rothschild banking family member. For purposes of this motion, however, the Court could accept all of de Rothschild's fantastical allegations and the supposed oral agreement would still be unenforceable.

Thus, for all of the above reasons, de Rothschild's supposed "oral agreement" with Cahen is not a valid and enforceable contract under New York law. For these reasons, summary judgment must be granted in favor of the Summit Capital Plaintiffs granting their declaratory judgment claims and dismissing de Rothschild's counterclaim as matter of law.

CONCLUSION

De Rothschild's claim that he is entitled to compensation based upon a purported oral agreement with Cahen is both barred by the New York Statute of Limitations and the Statute of Frauds. Moreover, based on de Rothschild's own sworn testimony and counterclaim, no meeting of the minds occurred for a valid agreement under New York law. Finally, the supposed oral agreement is not enforceable as some of the most basic terms are indefinite and, based on de Rothschild's testimony, the alleged contract was entered into for fraudulent purposes and thus illegal under New York law. For all of the above reasons, the Court should grant summary judgment to the Summit Capital Plaintiffs on their declaratory judgment claims and dismiss de Rothschild's counterclaim.

Dated: New York, New York
April 4, 2013



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