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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MC SQUARE CAPITAL, LLC,

Case No.: 1:20-cv-10070

Plaintiff,

COMPLAINT AND  
JURY DEMAND

-against-

HESS LIGHTING II, INC. D/B/A  
HESSAMERICA and NORDEONGROUP B.V.,

Defendants.

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Plaintiff MC SQUARE CAPITAL, LLC (“MC SQUARE” or “Plaintiff”) for its  
Complaint against HESS LIGHTING II, INC. D/B/A HESSAMERICA (“HESS”) and  
NORDEONGROUP B.V. (“NORDEON”), states as follows:

NATURE OF THE ACTION:

1. This action arises out of Defendants’ contractual relationship between Plaintiff MC SQUARE and Defendant NORDEON. On or about March 12, 2020, Defendant NORDEON entered into an agreement wherein Plaintiff MC SQUARE would act as Defendant NORDEON’s exclusive financial advisor in North America with such activities as raising funds. The intended beneficiary of the raised funds was Defendant NORDEON including but not limited to Defendant HESS, Defendant NORDEON’s subsidiary in the United States. Although Plaintiff MC

SQUARE obtained a fund source for the Defendant HESS, which was ultimately received by Defendant HESS, Defendant NORDEON failed to pay Plaintiff MC SQUARE the Term Sheet Fee and Success Fee specified in the agreement.

THE PARTIES:

2. Plaintiff MC SQUARE is a limited liability company organized under the laws of the State of Connecticut. Plaintiff MC SQUARE's sole member is a citizen of the State of Connecticut.

3. Defendant HESS is a corporation formed under the laws of the State of Delaware. Defendant HESS's principal place of business is in the State of South Carolina.

4. Defendant NORDEON is a Netherlands business entity organized under the laws of the Netherlands, with offices located in Eindhoven, Netherlands.

JURISDICTION AND VENUE:

5. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1332(a)(3) because the controversy exceeds \$75,000.00 and the parties are citizens of different States and in which citizens or subjects of a foreign state are additional parties.

6. Defendants are subject to this Court's personal jurisdiction in this District because they have voluntarily submitted to this Court's jurisdiction pursuant to forum-selections clauses described below.

7. Venue is proper in this District because Defendants are subject to this Court's personal jurisdiction because the Defendants have voluntarily submitted to this venue.

STATEMENT OF FACTS:

8. Plaintiff MC SQUARE is a member of The Financial Industry Regulatory

Authority (“FINRA”) and Securities Investor Protection Corporation (“SIPC”).

9. Plaintiff MC SQUARE, amongst other things, develops tailor-made equity and debt solutions designed to meet the needs of both established and growing companies.

10. Defendant NORDEON is a leading lighting company in Europe.

11. Defendant HESS is a subsidiary of Defendant NORDEON and is a manufacturer of outdoor and indoor lightings in the United States.

12. In February of 2020, Jennifer Wick, on behalf of Defendant NORDEON, had discussions with Plaintiff MC SQUARE about an opportunity of raising funds in the United States to be utilized by Defendant NORDEON.

13. In order to induce a lender or investor to make the loan or investment, Jennifer Wick advised Plaintiff MC SQUARE that the capital could possibly be secured by Defendant NORDEON’s subsidiary in the United States, namely Defendant HESS.

14. On or about March 12, 2020, Plaintiff MC SQUARE entered into an Engagement Agreement for Financial Advisory Services (“Agreement”) with Defendant NORDEON, wherein Plaintiff would act as NORDEON’s exclusive financial advisor in North America with activities to include the raise of capital by private placement funding.

15. The term of the Agreement was for a period of six (6) months.

16. Pursuant to the Agreement, upon receipt of a term sheet, Defendant NORDEON agreed to pay Plaintiff MC SQUARE a Term Sheet Fee in the amount of \$30,000.00.

17. Pursuant to the Agreement, Defendant NORDEON agreed to pay Plaintiff MC SQUARE a success fee, payable from immediately available funds, equal to the greater of 5% of the gross proceeds and \$500,000.00.

18. Pursuant to paragraph 6(f) of the Agreement: “. . .[NORDEON] shall continue to advise regarding any material developments or matters relating to the Company which occur during the term of MCS’s engagement hereunder.

19. Pursuant to paragraph 9 of the Agreement:

This Agreement will be governed by and construed in accordance with the laws of New York, without regard to its conflict of principles. . . In addition, you and we hereby irrevocably submits to the jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in the Borough of Manhattan, The City of New York in respect of the interpretation and enforcement of the terms of this Agreement, and each hereby waives and agrees not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought in or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and you and we hereby irrevocably agrees that all claims with respect to such action or proceeding shall be heard and determined in a New York State or Federal Court.

20. Pursuant to paragraph 10 of the Agreement: “In the event of any Offering, the Company grants MC Square the right (but not the obligation) to invest up to an amount equal to the total investment required to complete the offering. . .”

21. Defendant NORDEON requested that Plaintiff MC SQUARE seek funding in the amount of around \$5,000,000.00.

22. While seeking funding sources, it became apparent that the lenders would not be satisfied with guarantees and security solely from Defendant NORDEON.

23. Defendant NORDEON directed Plaintiff MC SQUARE to raise funds for its subsidiary, Defendant HESS.

24. Pursuant to Defendant NORDEON’s instruction, in June of 2020, Plaintiff MC SQUARE was actively sending Defendant HESS’s pitch deck, which included financials and

liquidity plans, to six potential lenders.

25. Upon review of Defendant HESS's pitch deck, SG Credit Partners, a potential lender, inquired if there an option to replace or assume HESS's current debt held by Synovus Financial Corp.

26. Based on SG Credit Partner's inquiry, Plaintiff MC SQUARE held discussions with Jennifer Wick regarding Synovus Financial Corp., suggesting Synovus Financial Corp. as an additional lender.

27. On or about June 30, 2020, Defendant NORDEON, through Jennifer Wick, instructed Plaintiff MC SQUARE to add Synovus Financial Corp. to its list of potential capital sources and to immediately contact the lender.

28. On July 1, 2020, Plaintiff MC SQUARE contacted Synovus Financial Corp. and sent lender Defendant HESS's financial materials.

29. Between July 2, 2020 and July 6, 2020, Plaintiff MC SQUARE facilitated communication between Defendant HESS and Synovus Financial Corp., and answered all of Synovus Financial Corp.'s inquiries regarding inconsistencies in Defendant HESS's financial materials.

30. On July 7, 2020, Jennifer Wick advised Plaintiff MC SQUARE, in writing, that Defendant NORDEON now preferred if Chris Stockton, on behalf of Defendant HESS, communicate directly with Fred Williams, on behalf of Synovus Financial Corp.

31. Jennifer Wick advised Plaintiff MC SQUARE that although the Defendants and Synovus Financial Corp. would be dealing with each other directly, Plaintiff would be "paid for it."

32. Jennifer Wick further advised Plaintiff MC SQUARE that it should continue work also with other lenders on behalf of the Defendants for the capital raise.

33. On July 24, 2020, Synovus Financial Corp. sent a tendered a term sheet to Defendant HESS. Plaintiff was carbon copied on the email.

34. On August 2, 2020, Plaintiff advised Jennifer Wick that Muzinich & Co. was interested in receiving a non-disclosure agreement from the Defendants.

35. On August 3, 2020, Jennifer Wick advised Plaintiff MC SQUARE that “[w]e are not starting another process at this point in time.”

36. On August 12, 2020, after further inquiry to Synovus Financial Corp., Plaintiff was advised by Fred Williams: “I have been instructed by my customer Hess Lighting to not have any communications with you regarding their loan request. Therefore, I will not return or take your calls per their instructions.” Chris Stockton, on behalf of Defendant NORDEON and HESS, was carbon copied on the email.

37. In a separate communication exchange involving Plaintiff and Synovus Financial Corp., Fred Williams authored an introductory email to another Synovus Financial Corp., which stated: “. . . MC Capital Square, Middle Market focus, was hired by the parent company of one of my customers to help find some capital for them and the subsidiary we bank. I ultimately did a loan transaction that met their needs. . .”

38. Upon information and belief, the Defendant HESS received a loan from Synovus Financial Corp.

39. In October of 2020, Plaintiff MC SQUARE made a formal demand to Defendant NORDEON for the Term Sheet Fee and Success Fee due under the March 12, 2020 Agreement.

40. The demand was ignored by the Defendants.

41. That Defendant HESS knowingly exploited the benefits under the Agreement and received the benefits directly flowing from the Agreement.

AS AND FOR A FIRST CAUSE OF ACTION  
(Breach of Contract against HESS and NORDEON)

42. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint as if fully set forth herein.

43. Plaintiff MC SQUARE and Defendant NORDEON entered into an Agreement wherein Plaintiff would provide financial advise and assist Defendant NORDEON with raising capital.

44. That Defendant HESS is a third-party nonsignatory to a valid and enforceable contract between Plaintiff and Defendant NORDEON.

45. That Plaintiff MC SQUARE ultimately facilitated a deal that met the needs of Defendant NORDEON's and its intended beneficiary, namely: Defendant HESS.

46. That Defendant NORDEON breached the Agreement by failing to pay the Plaintiff a Term Sheet Fee.

47. That Defendant NORDEON breached the Agreement by failing to pay the Plaintiff a Success Fee.

48. That Defendant NORDEON breached the Agreement by failing to communicate with the Plaintiff as agreed in the Agreement.

49. That Defendant NORDEON breached the Agreement by violating the Plaintiff's co-investment rights.

50. Plaintiff has fulfilled all of its obligations that have arisen under the Agreement.

51. As a direct and proximate result of Defendant NORDEON's breach, Plaintiff has suffered damages in an amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION  
(Tortious Interference with a Contract against HESS)

52. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs of this Complaint as if fully set forth herein.

53. Plaintiff MC SQUARE and Defendant NORDEON entered into an Agreement wherein Plaintiff would provide financial advise and assist Defendant NORDEON with raising capital.

54. That Defendant HESS, a subsidiary of Defendant NORDEON, was aware of the existence of the agreement and provided information for Plaintiff to furnish to lenders.

55. That Plaintiff contacted Synovus Financial Corp. for the purposes of obtaining capital in furtherance of its agreement with Defendant NORDEON.

56. That Defendant HESS intentionally excluded Plaintiff from dealing directly with Synovus Financial Corp.

57. That Defendant HESS intentionally and improperly procured a breach of the Agreement between Plaintiff and Defendant NORDEON.

58. As a direct and proximate result of Defendant HESS's conduct, Plaintiff has suffered damages in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION  
(Unjust Enrichment against HESS)

59. Plaintiff repeats and realleges each and every allegation in the foregoing



paragraphs of this Complaint as if fully set forth herein.

60. Upon information and belief, Defendant HESS was enriched by receiving capital from Synovus Financial Corp.

61. That Defendant HESS was enriched at the expense of the work provided by Plaintiff.

62. It would be against equity and good conscience to permit Defendant Hess to retain the proceeds of the Term Sheet Fee and Success Fee.

63. As a direct and proximate result of Defendant HESS's conduct, Plaintiff has suffered damages in an amount to be determined at trial.

JURY DEMAND:

64. Plaintiff demands trial by jury.

WHEREFORE, Plaintiff MC SQUARE CAPITAL, LLC respectfully requests that this Court grant the following relief:

- a. Damages in the amount of \$530,000.00 jointly against all Defendants;
- b. Punitive damages;
- c. An award of prejudgment and post judgment interest;
- d. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- e. Such other, further, and different relief as this Court deems just and proper.

Dated: Brooklyn, New York  
December 1, 2020

/s/ Alexander M. Dudelson  
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