

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UBER TECHNOLOGIES, INC.,)	CIVIL ACTION FILE NO.
JAMES RIVER INSURANCE COMPANY,)		_____
and CELESTINE J. KIPRONO,)	
)	JURY TRIAL DEMANDED
Plaintiffs,)	
v.)	
)	
The Estate and Next of Kin for)	
ALEXANDER REYES,)	
)	
Defendants.)	
_____)	

COMPLAINT
TO ENFORCE SETTLEMENT

Plaintiffs UBER TECHNOLOGIES, INC.; JAMES RIVER INSURANCE COMPANY; and CELESTINE J. KIPRONO bring this Complaint against Defendants The Estate and Next of Kin for ALEXANDER REYES, showing this Court the following:

PRELIMINARY STATEMENT

1.

Defendants, by and through counsel Bryan R. Howard (“Howard”), have breached an enforceable contract with Plaintiffs. Howard sent a demand letter on behalf of Mr. Alexander Reyes’s estate and next of kin. The letter offered “a release of all claims by the estate and next of kin of Alexander Reyes against

[James River Insurance Company's] insured, Uber, and the Uber driver [*sic*] Ms. Celestine Jepkech Kiprono" in exchange for "policy limits on the commercial policy that was in effect when Ms. Celestine Kiprono was giving an uber [*sic*] ride."

Howard's letter explicitly stated it was a *Holt* demand under O.C.G.A. § 9-11-67.1. Pursuant to Georgia law, Plaintiffs timely accepted the exact terms of the demand unconditionally in writing, forming an enforceable settlement contract.

After forming the contract, Defendants, through Howard, allegedly refuse to enter a general release of all claims, only a "limited release." Howard purports his clients will not agree to release all parties he initially stated they would release. Howard claims his clients will instead seek damages from Plaintiffs' additional layers of insurance coverage.¹

¹ When Howard sent the demand letter, he had not yet received information from any of the Plaintiffs regarding additional layers of coverage. Even after receiving information from Plaintiffs as to additional layers of coverage, *prior to the deadline for accepting the Holt demand*, Howard continued to insist the offer remained as described in the demand letter in telephone conversations with the undersigned as well as with Plaintiffs directly. At no time was Howard's *Holt* demand *ever* withdrawn.

Plaintiffs file this action seeking Defendants' specific performance on the settlement contract, including the execution of a full release of all claims against Plaintiffs. In the alternative, Plaintiffs seek a declaratory judgment that Defendants' legal rights as to claims against Plaintiffs have been released.

JURISDICTION AND VENUE

2.

Jurisdiction is proper under 28 U.S.C. § 1332(a) as the amount in controversy exceeds \$75,000 and this action is between citizens of different states.

3.

Venue is proper under 28 U.S.C. § 1391(b).

PARTIES

4.

Plaintiff Uber Technologies, Inc. is incorporated in Delaware with its principal place of business in California.

5.

Plaintiff James River Insurance Company ("James River") is incorporated in Ohio with its principal place of business in Virginia.

6.

Plaintiff Celestine J. Kiprono ("Kiprono") is not a Georgia resident or citizen.

7.

Defendants The Estate and Next of Kin for Alexander Reyes (“Defendants”) are citizens of Georgia, upon information and belief.

8.

Diversity jurisdiction under 28 U.S.C. § 1332(a) therefore exists in this matter.

FACTUAL ALLEGATIONS

9.

On April 25, 2016, Howard, acting as attorney on behalf of Defendants, sent correspondence to James River re: Time Limited Holt Demand (“Howard’s Demand”).

10.

A true and correct copy of Howard’s Demand is attached as Exhibit A.

11.

Howard’s Demand states: “. . . **I am willing to recommend, and the next of kin of Alexander Reyes will accept \$1,000,000.00 for full settlement of all claims**” (emphasis original).

12.

Howard's Demand states:

This demand is being written **pursuant to O.C.G.A. § 9-11-67.1** and pursuant to this statute you have 30 days to respond, accepting the demand for policy limits in writing **in exchange for a release of all claims by the state and next of kin of Alexander Reyes against your insured, Uber, and the uber [sic] driver Ms. Celestine Jepkech Kiprono.**

(emphasis original).

13.

On May 24, 2016 (one day before the deadline to respond to Howard's Demand), Plaintiffs, by and through counsel, sent correspondence to Howard re: Reyes, Alexander ("Acceptance Letter").

14.

A true and correct copy of the Acceptance Letter is attached as Exhibit B.

15.

The Acceptance Letter states:

This correspondence serves as formal response and **unconditional** acceptance of the **exact** terms of your Holt demand.

(emphasis added).

16.

No Defendant withdrew Howard's Demand prior to May 25, 2016.

17.

On May 31, 2016, Plaintiffs, by and through counsel, sent correspondence to Howard re: Reyes, Alexander (“Release Request Letter”).

18.

A true and correct copy of Plaintiffs’ Release Request Letter is attached as Exhibit C.

19.

The Release Request Letter states:

We have attached a draft release for your client’s execution and your witness; tailor it to fit your needs. As soon as your client executes the release and returns same, and you send us your W-9 and draft instructions, we will forward the settlement funds accordingly.

Please be advised that if we do not receive the executed release by 5:00 p.m. Monday, June 6, 2016, we will seek court intervention to enforce this settlement.

20.

On May 31, 2016, Howard sent correspondence to Plaintiffs’ counsel that states: “My clients will not be signing a general release.”

21.

No Defendant executed any release per Howard’s Demand.

COUNT I: BREACH OF CONTRACT

22.

The foregoing paragraphs are incorporated under this count as if fully restated.

23.

This matter is governed, in part, by O.C.G.A. § 9-11-67.1.

24.

Howard's Demand on behalf of Defendants constituted an offer.

25.

Plaintiffs timely accepted the exact terms of Howard's Demand unconditionally in writing.

26.

Plaintiffs' acceptance of the offer in Howard's Demand formed an enforceable contract.

[Document continues on next page.]

27.

Howard's Demand states:

This demand is being written **pursuant to O.C.G.A. § 9-11-67.1** and pursuant to this statute you have 30 days to respond, accepting the demand for policy limits in writing **in exchange for a release of all claims by the state and next of kin of Alexander Reyes against your insured, Uber, and the uber [sic] driver Ms. Celestine Jepkech Kiprono.**

(emphasis original).

28.

No Defendant executed any release of claims per Howard's Demand.

29.

On May 31, 2016, Howard sent correspondence to Plaintiffs' counsel that states: "My clients will not be signing a general release."

30.

Howard, on behalf of Defendants, anticipatorily repudiated and/or otherwise breached the contract.

31.

Defendants are in breach of the contract.

32.

Due to Defendants' breach, Plaintiffs have suffered nominal, actual, and consequential damages in an amount to be determined at trial.

COUNT II: SPECIFIC PERFORMANCE

33.

The foregoing paragraphs are incorporated under this count as if fully restated.

34.

This matter is governed, in part, by O.C.G.A. § 9-11-67.1.

35.

Howard's Demand on behalf of Defendants constituted an offer.

36.

Plaintiffs timely accepted the exact terms of Howard's Demand unconditionally in writing.

37.

Plaintiffs' acceptance of the offer in Howard's Demand formed an enforceable contract.

38.

Howard's Demand states:

This demand is being written **pursuant to O.C.G.A. § 9-11-67.1** and pursuant to this statute you have 30 days to respond, accepting the demand for policy limits in writing **in exchange for a release of all claims by the state and next of kin of Alexander Reyes against your insured, Uber, and the uber [sic] driver Ms. Celestine Jepkech Kiprono.**

(emphasis original).

39.

No Defendant executed any release of claims per Howard's Demand.

40.

The measure of damages resulting from Defendants' non-performance of the contract is uncertain and difficult to ascertain.

41.

Plaintiffs are entitled to Defendants' specific performance of the terms of the contract.

COUNT III: DECLARATORY JUDGMENT

42.

The foregoing paragraphs are incorporated under this count as if fully restated.

43.

An actual controversy exists as to Defendants' rights to file a claim against Plaintiffs, creating a threat of future litigation by Defendants against Plaintiffs.

44.

This matter is governed, in part, by O.C.G.A. § 9-11-67.1.

45.

Howard's Demand constituted an offer.

46.

Plaintiffs timely accepted the exact terms of Howard's Demand unconditionally in writing.

47.

Plaintiffs' acceptance of the offer in Howard's Demand formed an enforceable contract.

48.

Howard's Demand states:

This demand is being written **pursuant to O.C.G.A. § 9-11-67.1** and pursuant to this statute you have 30 days to respond, accepting the demand for policy limits in writing **in exchange for a release of all claims by the state and next of kin of Alexander Reyes against your insured, Uber, and the uber [sic] driver Ms. Celestine Jepkech Kiprono.**

(emphasis original).

49.

Plaintiffs are entitled to declaratory judgment that Defendants' legal rights as to claims against Plaintiffs have been released.

WHEREFORE, Plaintiffs respectfully request:

1. For the Court to order Defendants' specific performance of the terms of Howard's Demand;
2. For the Court to enter declaratory judgment that Defendants' legal rights as to claims against Plaintiffs have been released;
3. For damages under O.C.G.A. §§ 13-6-11, 9-15-14, and all like statutory provisions;
4. For costs and attorney's fees; and
5. For all such further relief as the Court may deem proper.

Respectfully submitted, this 14th day of June, 2016.

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LOCAL RULE 5.1 CERTIFICATION

I hereby certify that this pleading was prepared in accord with Northern
District of Georgia Local Rule 5.1.

/s/ Jeffrey W. Melcher