

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

TOBIAS FRERE-JONES,

Plaintiff,

-against-

JONATHAN HOEFLER

Defendant.

Index No.

COMPLAINT**NATURE OF THIS CLAIM**

1. This is an action to enforce an agreement made between Plaintiff Frere- Jones and Defendant Hoefler to become equal owners in The Hoefler Type Foundry, Inc. (“HTF”), presently known and operating as Hoefler & Frere-Jones. Their agreement was that Frere-Jones would contribute his name, reputation, industry connections and design authority, as well as certain fonts he had already developed and owned or would own when he left his former company (referred to as the “Dowry Fonts”), valued in excess of \$3 million, in exchange for half of Hoefler’s equity in HTF and “his name on the door.” Frere-Jones fully performed all of his agreed obligations, and he moved to New York to do so.

2. However, in the most profound treachery and sustained exploitation of friendship, trust and confidence, Hoefler accepted all of the benefits provided by Frere- Jones while repeatedly promising Frere-Jones that he would give him the agreed equity, only to refuse to do so when finally demanded.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over the defendants pursuant to CPLR § 301 because both parties are residents of New York City and acts complained of occurred here, and venue is proper pursuant to CPLR Article 5.

THE PARTIES

4. Plaintiff Tobias Frere-Jones is one of the world's leading and most recognized type designers, having designed over 800 fonts, in over 145 languages, that are widely used in newspapers, magazines, advertising, packaging, websites, corporate identities, political campaigns and websites around the world. He joined the faculty of the Yale School of Art in 1996 and frequently lectures on typeface design and typography at other academic institutions and graphic design organizations throughout the world. His work has been profiled in many trade and general purpose publications, and is included in the permanent collection of the Victoria & Albert Museum, London and the Museum of Modern Art, New York. In 2006, Frere-Jones became the first American to receive the prestigious Gerrit Noordzij Prize, presented by the Royal Academy of Fine Arts in The Hague in honor of his unique contributions to type design, typography, and type education. In 2013, he received the ALGA medal -the graphic design profession's highest honor-in recognition for his exceptional achievements over the course of his career, and his contributions to the field of design and visual communication.

5. Defendant Jonathan Hoefler is also a type designer and a businessman.

RELEVANT FACTS

6. After publishing his first retail font at the age of nineteen and graduating from the Rhode Island School of Design, Plaintiff began working for The Font Bureau, Inc. (“Font Bureau”) in Boston in 1992.

7. While at Font Bureau, Frere-Jones designed several well-received and profitable fonts that are Font Bureau’s best known, including Interstate, Poynter Oldstyle and Poynter Gothic.

8. Fonts are software, and are purchased by way of license to use the licensed font software in specific ways, in print, online and other media.

9. During the 1990s, Hoefler owned and operated a one-man design shop, The Hoefler Type Foundry, Inc. (“HTF”), a New York corporation.

10. Frere-Jones and Hoefler got to know each other as competitors, then as collaborators, and by the mid-1990s, they were close friends.

11. In the summer of 1999, Hoefler approached Frere-Jones about working together “as Tobias and Jonathan’s Excellent Adventure (LLC)” and Hoefler made a formal 50-50 partnership proposal at the Gotham Bar and Grill in Manhattan.

12. Hoefler’s proposal was that Frere-Jones leave Font Bureau and move to New York City, and that they join together as equal partners in a new venture to be housed in HTF.

13. The heart of the proposal was that Frere-Jones would contribute his name, reputation, industry connections and design authority, as well as obtain and assign to HTF the rights to certain fonts he had already developed at Font Bureau (referred to as the “Dowry Fonts”) in exchange for half of the equity in Hoefler’s existing business, HTF.

14. A critical part of the creation of the new partnership was that Frere-Jones would “have his name on the door.”

15. The Dowry Fonts included the following font families: Whitney (a/k/a Whitney Sans), Whitney Titling, Elzevir (a/k/a MSL Elzevir), Welo Script, Archipelago (flk/a Shell Sans), Type O, Saugerties, Greasemonkey, Vive, Api-ana, and Esprit Clockface. Fonts from the Dowry became the basis for both lucrative commission work and one of HTF’s most successful and profitable retail font families-Whitney-and HTF would not exist in its current form today without them. In proposing the partnership to Frere-Jones, Hoefler expressed that Whitney would be the most valuable of the Dowry Fonts to be assigned to HTF. Hoefler knew that Frere-Jones had already received one industry award for Whitney, in 1998, and he told Frere-Jones that the Whitney family would fill a very large gap in HTF’s repertoire because there were no fonts in the then- existing HTF library that were as versatile or had such a wide range of potential applications.

16. In furtherance of the partnership agreement, in late 1999, Frere-Jones left Font Bureau, moved to New York and joined HTF as the principal designer responsible for the creation and manufacture of new font designs, the creation and refinement of new methodologies, technological trouble-shooting and the training and management of future junior designers.

17. Hoefler’s principal role was to run the business side of the company and use his “client-hustling skills” to sell Frere-Jones’s work.

18. Frere-Jones never would have left Font Bureau and Boston, where he was established and had achieved significant renown, merely to work for HTF as an employee.

19. Without Frere-Jones, HTF was a one-man shop. With Frere-Jones, HTF grew dramatically in size-from Hoefler and an office assistant to as many as eighteen people-in scope and scale, and in recognition.

20. As early as February 2000, Hoefler began to promote his partnership with Frere-Jones to industry and media contacts, current clients and potential clients. For example, on February 22, 2000, Hoefler emailed Sephora Creative, a potential client: "I think when we last spoke, I was in the process of setting up my new partnership with Tobias Frere-Jones (you know his Interstate [font] family, among others)...."

21. Between 2000 and 2004, the two partners worked together to build HTF from Hoefler's solo shop into a significant business depending upon Frere-Jones's reputation, industry connections, design skills, training and management expertise with junior designers and the Dowry Fonts.

22. At the same time, Frere-Jones and Hoefler repeatedly discussed completing their basic deal, and they began to focus on rebranding HTF as "Hoefler & Frere-Jones," the name under which it operates today.

23. In June 2003, the partners and HTF Chief Operating Officer, Carleen Borsella (Hoefler's wife)-who had begun working for HTF in 2002 in a business and marketing role-hired a public relations consultant to implement the name change:

"Jonathan Hoefler, Principal of The Hoefler Type Foundry, and Tobias Frere-Jones, Type Director of The Hoefler Type Foundry, announced today that they have entered into an agreement to become equal partners and to rename the business Hoefler & Frere-Jones Typography."

24. Significantly, between their agreement in 1999 and March 2004, the partners developed, expanded, and grew HTF without any corporate formality. This ratified Hoefler's and Frere-Jones's 50-50 partnership agreement.

25. Also during that period, Frere-Jones continued to perform his part of the 50-50 partnership agreement by negotiating with Font Bureau to obtain the rights to the Dowry Fonts, which he acquired in November 2002.

26. In January 2004, Hoefler and HTF's attorney Frank Martinez presented Frere-Jones with a Sale and Assignment of Type Fonts that transferred the Dowry Fonts to HTF. Frere-Jones signed this agreement in March 2004; he was not separately represented by counsel. The sale was for nominal consideration of \$10 and Frere-Jones, who had left Font Bureau, moved to New York and actively worked to build HTF, all in reliance on the 50-50 partnership agreement, considered signing the document a ministerial act as part of his performance of the original bargain with Hoefler.

27. Upon information and belief, in March 2004, the royalty value of the Dowry Fonts was in excess of \$3 million.

28. Frere-Jones never would have transferred the Dowry Fonts to HTF but for his 50-50 partnership agreement with Hoefler.

29. After he signed the Sale and Assignment of Type Fonts, Frere-Jones repeatedly asked Hoefler to complete his part of the bargain and transfer half of the ownership in HTF to him, and Hoefler repeatedly acknowledged his obligation to do so, but each time begged off purportedly due to the pressures of work or his personal life. As a good partner, Frere-Jones respected Hoefler's wishes.

30. Upon information and belief, on the many occasions that Hoefler put off Frere-Jones, he intended to, and did, dupe Frere-Jones and the graphic design world into thinking that there was an equal partnership (as reflected by the trade name then being used and as repeatedly expressed both orally and in writing publicly and internally within HTF).

31. Hoefler's actions were intentional and perpetrated with the intent of obtaining the Dowry Fonts and Frere-Jones's name, reputational benefit, industry connections, and design work and authority for the exclusive benefit of Hoefler.

32. Meanwhile, Hoefler continued to represent that Frere-Jones was his business partner and to describe him as so, both internally and publically. For example, Hoefler had always represented to Frere-Jones that they drew the same salary and received the same percentage of contributions into their retirement accounts, and in an unrelated litigation, Hoefler valued the two men as equals.

33. In 2004, HTF printed its first catalogue under the name "Hoefler & Frere-Jones." In it, Hoefler wrote:

Since we began working together in 1999, Tobias has developed some of the studio's most exciting projects, including original typefaces for Nike, Martha Stewart Living, Pentagram, and The Wall Street Journal. Working together has given us the chance to more fully explore our interests, and it's heightened both our sense of purpose and the standard to which we hold our combined body of work. So in celebration of our ongoing collaboration, I'm delighted to announce that The Hoefler Type Foundry will enter its sixteenth year as HOEFLER & FRERE-JONES.

34. Time passed, and Hoefler continued to represent Frere-Jones as his partner to industry contacts and clients, such as the Smithsonian Institute (2012), and reaped the benefits of doing so.

35. In the Spring of 2012, Hoefler told Frere-Jones that he would complete their deal as soon as HTF launched a new product, an online font delivery service geared towards web designers, called cloud.typography.com (the “Cloud”).

36. The Cloud offers its subscribers the ability to access and purchase fonts from the HTF type library for use in web page design, including one of the Dowry Fonts and fonts designed or improved by Frere-Jones.

37. The Cloud launch date was continually postponed.

38. In the Spring of 2013, on multiple occasions, Frere-Jones asked Hoefler to see HTF’s financial records but Hoefler refused.

39. The Cloud finally launched on July 1, 2013.

40. On the day the Cloud launched, Frere-Jones asked Hoefler to set a date to conclude their deal as Hoefler had promised, which Hoefler scheduled on July 31, 2013.

41. On July 31, 2013, Frere-Jones followed up with Hoefler, and Hoefler responded to Frere-Jones, “Stop it. I’m working on it. Stop harassing me.”

42. On October 21, 2013, for the first time, Hoefler explicitly reneged on his personal agreement to transfer 50% of HTF to Frere-Jones.

43. Upon information and belief, Hoefler transferred to his wife, Borsella, the shares that he had promised to Frere-Jones and Hoefler and Borsella are now the owners of 100% of HTF .

**FIRST CAUSE OF ACTION
(Breach of Contract)**

44. Plaintiff repeats and realleges paragraphs 1 to 43 as if fully set forth herein.

45. Defendant Hoefler and Plaintiff Frere-Jones entered into an oral contract.

46. Hoefler promised to transfer to Frere-Jones 50% of his ownership of HTF in exchange for Frere-Jones's transfer of the Dowry Fonts and Frere-Jones's resignation from Font Bureau, relocation to New York, and contribution of his name, reputation, industry connections and design authority to HTF.

47. Frere-Jones completely performed his agreement by obtaining and transferring the Dowry Fonts, resigning from Font Bureau, relocating to New York, and giving his name, reputation, industry connections and design authority to HTF.

48. Hoefler has repeatedly refused to transfer the agreed consideration in blatant, willful and egregious breach of contract.

49. Frere-Jones has suffered damage from the breach in an amount to be determined at trial but not less than \$20 million.

**SECOND CAUSE OF ACTION
(Promissory Estoppel)**

50. Plaintiff repeats and realleges paragraphs 1 to 49 as if fully set forth herein.

51. Defendant Hoefler promised to transfer to Plaintiff Frere-Jones 50% of his ownership of HTF in exchange for Frere-Jones's transfer of the Dowry Fonts and Frere-Jones's resignation from Font Bureau, relocation to

York, and contribution of his name, reputation, industry connections and design authority to HTF.

52. Hoefler represented to Frere-Jones and the public their equal partnership and repeatedly renewed his promise to transfer 50% of his ownership of HTF to Frere-Jones.

53. Frere-Jones acted in reasonable reliance on Hoefler's repeatedly expressed promise to transfer 50% ownership of HTF to him.

54. Frere-Jones repeatedly asked Hoefler to complete their deal and transfer half of the ownership of HTF to him, and Hoefler repeatedly acknowledged his obligation to do so but refused to do so.

55. As a result of Frere-Jones's reliance on the promise made by Defendant, Frere-Jones has suffered damage from his reliance in an amount to be determined at trial but not less than \$20 million.

THIRD CAUSE OF ACTION (DECLARATION OF CONSTRUCTIVE TRUST)

56. Plaintiff repeats and realleges paragraphs 1 to 55 as if fully set forth herein.

57. Defendant Hoefler entered into an oral partnership agreement with Plaintiff Frere-Jones.

58. As Frere-Jones's partner, Hoefler owed Frere-Jones a fiduciary duty.

59. Hoefler promised to transfer to Frere-Jones 50% of the ownership of HTF in exchange for Frere-Jones's transfer of the Dowry Fonts, Frere-Jones's resignation from Font Bureau, relocation to New York, and contribution of his name, reputation, industry connections and design authority to HTF, and Frere-Jones

acted in reasonable reliance upon Hoefler's express and repeated promises as well as Hoefler's actions taken publically to reinforce the promises.

60. Hoefler has repeatedly refused to transfer 50% of the ownership of HTF as he promised Frere-Jones.

61. As 100% owner of HTF (together with his wife), Hoefler has been unjustly enriched by half of the value of HTF derived from Frere-Jones's performance of their agreement.

62. By reason of the foregoing, Frere-Jones is entitled to a declaration that Hoefler hold a 50% share of HTF in trust for the benefit of Frere-Jones.

FOURTH CAUSE OF ACTION (UNJUST ENRICHMENT)

63. Plaintiff repeats and realieges paragraphs 1 to 62 as if fully set forth herein.

64. Defendant Hoefler has been unjustly enriched and benefited by obtaining and retaining the Dowry Fonts, Plaintiff Frere-Jones's resignation from Font Bureau and relocation to New York, and Frere-Jones's name, reputation, industry connections and design authority without providing the agreed upon consideration.

65. Hoefler's unjust enrichment has come at the direct expense of Frere-Jones.

66. Allowing Hoefler to retain such enrichment is against equity and good conscience.

67. As a result of Hoefler's being unjustly enriched at the expense of Frere-Jones, Frere-Jones has been damaged in an amount to be determined at trial, but not less than \$20 million.

**FIFTH CAUSE OF ACTION
(FRAUD)**

68. Plaintiff repeats and realleges paragraphs 1 to 67 as if fully set forth herein.

69. Defendant Hoefler falsely promised to transfer to Plaintiff Frere-Jones 50% of his ownership of HTF in exchange for Frere-Jones's transfer of the Dowry Fonts, Frere-Jones's resignation from Font Bureau, relocation to New York, and contribution of his name, reputation, industry connections and design authority to HTF.

70. Hoefler represented to Frere-Jones and the public that they were equal partners and repeatedly renewed his false promise to transfer half of his ownership of HTF to Frere-Jones.

71. At all relevant times, Hoefler knew that he was making false representations and promises to Frere-Jones.

72. Upon information and belief, on the many occasions that Hoefler made false representations and promises to Frere-Jones, he intended to, and did, dupe Frere-Jones into thinking that there was an equal partnership in order to induce Frere-Jones to transfer the Dowry Fonts and cause Frere-Jones to resign from Font Bureau, relocate to New York, and contribute his name, reputation, industry connections and design authority to HTF.

73. Frere-Jones was justified in relying on Hoefler's representations and promises.

74. Frere-Jones has suffered damage from Hoefler's fraud in an amount to be determined at trial but not less than \$20 million.

WHEREFORE, the Plaintiff demands judgment against the Defendant as follows:

(a) On the First Cause of Action against the Defendant, damages in an amount to be determined at trial, but not less than \$20 million;

(b) On the Second Cause of Action against the Defendant, damages in an amount to be determined at trial, but not less than \$20 million;

(c) On the Third Cause of Action against Defendant, imposing a constructive Trust on 50% of the ownership of HTF currently held by Hoefler and/or his wife; (d) On the Fourth Cause of Action against Defendant, damages in an amount to be determined at trial, but not less than \$20 million;

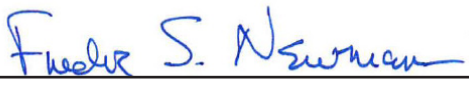
(e) On the Fifth Cause of Action against Defendant, damages in an amount to be determined at trial, but not less than \$20 million;

(f) On all causes of action, punitive damages in an amount to be determined at trial;

(g) Such further relief as the Court deems just and proper.

Dated: New York, New York
January 16, 2014

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