

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

TRADEMARK PROPERTIES,)
INC., a South Carolina corporation;)
RICHARD C. DAVIS, an individual)

Civil Action No.2:06-CV-2195-CWH

Plaintiffs,)

vs.)

A&E TELEVISION NETWORKS,)
a joint venture of the Hearst)
Corporation, ABC INC. and NBC)
UNIVERSAL; DEPARTURE FILMS)
an entity of unknown origin; and)
DOES 1-20, inclusive)

PLAINTIFFS' RULE 26(f) REPORT AND
LOCAL RULE 26.03 RESPONSES

Defendants.)

A&E TELEVISION NETWORKS,)

Counterclaim Plaintiff,)

vs.)

TRADEMARK PROPERTIES, INC.)
and RICHARD C. DAVIS,)

Counterclaim Defendants.)

Pursuant to Federal Rule of Civil Procedure 26(f) and Local Civil Rule 26.03, the
Plaintiffs, Trademark Properties, Inc. a South Carolina corporation (“Trademark”) and Richard
C. Davis (“Davis”) collectively referred to as (“Plaintiffs”) submit the following report:

RULE 26(f) DISCLOSURES

- 1. What changes should be made in the timing, form or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made?**

RESPONSE: The Plaintiffs have submitted a proposed scheduling order, which is attached hereto.

- 2. The subjects on which discovery may be needed, when discovery should be completed and whether discovery should be conducted in phase or be limited to or focused upon particular issues.**

RESPONSE: Discovery will be necessary but not limited to, the course of dealings between the Plaintiffs and Defendants with respect to the show “Flip This House”, including the terms and performance of any contracts alleged to have been entered into. Discovery will also be necessary on the claims for damages. Plaintiffs request that discovery be completed according to the proposed scheduling order attached hereto.

- 3. What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed?**

RESPONSE: No limitations other than those identified in the proposed scheduling order are known at this time.

- 4. Any other orders that should be entered by the Court under Rule 26(c) or under Rule 16(b) and (c).**

RESPONSE: None of which Plaintiffs are currently aware.

LOCAL RULE 26.03 DISCLOSURES

- 1. A short statement of the facts of the case.**

RESPONSE: That Davis is the creator and owner of the unique concept, format and treatment of a reality based television program which features Davis and certain other staff members of Trademark going through the process of locating, acquiring, refurbishing and selling houses. Davis titled his concept and treatment “Worst of First”, subsequently renamed “Flip This House” hereinafter referred to as the (“Project”). The Plaintiffs created and produced a digital video pilot version of the Plaintiffs’ project and submitted the treatment and pilot episode to the Defendant AETN. After reviewing the pilot, AETN, expressed interest in entering into an agreement with the Plaintiffs to produce and televise a television series based on the Plaintiffs’ Project. The Plaintiffs and AETN then entered into an oral agreement whereby they would be equal 50/50 owners of the Project and would share equally in all net revenues and proceeds generated from the exploitation of the Project. Based upon the agreement the Plaintiff permitted AETN to retain Departure Films to produce the episodes of the television series based on Plaintiffs’ Project. Davis was credited as being the creator of the Project and was the executive producer of each episode. On or about the conclusion of the first season of producing the project AETN failed to honor the agreement reached between the Plaintiffs and AETN. AETN Proceeded to produced and televise a second season of the Project for its own use and benefit.

2. The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony.

RESPONSE:

Plaintiffs believe that the following individuals are likely to have discoverable information that may support their claim or defense in this case.

Richard C. Davis

Trademark Properties, Inc.
1175 Folly Road
Charleston, SC 29412

Richard Davis has general knowledge concerning the allegations of the Plaintiffs Complaint and can testify concerning same.

Ginger Alexander
Trademark Properties, Inc.
1175 Folly Road
Charleston, SC 29412

Ginger Alexander is employed by Trademark Investments, LLC and is generally familiar with the allegations in the Plaintiffs Complaint and can testify concerning same.

Thomas Moody
A&E Television Networks
235 East 45 Street
New York, NY 10017

Thomas Moody is aware of the agreement reached between the Plaintiffs and the Defendant, A&E Television Networks, and should testify concerning same.

Michael Morrison
A&E Television Networks
235 East 45 Street
New York, NY 10017

Mr. Morrison replaced Charles Norlander and was involved with negotiations with the Plaintiffs after the agreement was made with Charles Norlander, with A&E Television Networks and should testify concerning same.

Nancy Dubuc
A&E Television Networks
235 East 45 Street
New York, NY 10017

Ms. Dubuc is aware of the agreement reached between the Plaintiffs and the Defendants, A&E Television Networks, and should testify concerning same.

Max Weissman
Max Weissman Productions, d/b/a Departure Films
333 West 39 Street #1502

New York, NY 10018

Mr. Weissman was in charge of the production company, Departure Films, which was hired by A&E Television Networks relative to the production of the series known as “Flip This House”. Mr. Weissman can also testify to his communication with the Plaintiff, Richard Davis, and also to the Plaintiffs duties, responsibilities and involvement relative to the subject series.

Charles Norlander
Food Network
1180 5th Avenue
New York, NY 10036

Mr. Norlander is aware of the agreement reached between the Plaintiffs and the Defendant, A&E Television Networks, and should testify concerning same.

Thomas Whaley
St. Paul Saints Baseball Club, Inc.
1771 Energy Park Drive
St. Paul, Minnesota 55108

Mr. Whaley is an attorney that was retained by the Plaintiffs to negotiate talent fees relative to the series known as “Flip This House”.

Robert W. Bass, CPA
Williamson & Associates, Inc.
500 Taylor Street, Suite 402
Columbia, SC 29201

Robert W. Bass is the Certified Public Accountant for the Plaintiffs and can testify to the Plaintiffs expenses relative to the production of the series. It is also anticipated that Robert W. Bass will be able to testify to the net proceeds and revenues generated from the subject series once information is obtained concerning same.

3. The name and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered).

RESPONSE: Robert W. Bass, CPA as identified above may be offered as an expert witness to testify concerning the Plaintiffs expenses relative to the production of the series and net revenues and proceeds generated from the series once the information is obtained concerning same. The Plaintiffs other experts, if any, will be identified according to the scheduling order.

4. A summary of the claims or defenses with statutory and/or case citations supporting the same.

RESPONSE:

- (a) In the First Cause of Action, the Plaintiffs sued AETN for Fraud. See Brown vs. Stewart, 557 S.E. 2d 676 (S.C. App. 2001) (a party asserting a claim for fraud in the inducement to enter into a contract must establish (1) a representation, (2) its falsity, (3) its materiality, (4) knowledge of its falsity or reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.)
- (b) In the Second Cause of Action, the Plaintiffs sued AETN for Breach of contract. See Wright vs. Trask 495 S.E. 2d 222, 329 S.C. 170 (S.C. App. 1997) (When determining whether contracts exist, intention of parties should be determined from surrounding circumstances, as well as from testimony of all witnesses, and subsequent acts are relevant to show whether contract was intended.)
- (c) In the Third Cause of Action, the Plaintiffs sued AETN for Promissory Estoppel. See Davis v. Greenwood School District 50, 620 S.E. 2d 65 (S.C. 2005) (Promissory estoppel requires a claimant to prove: (1) the presence of an unambiguous promise; (2) the promisee reasonably relied upon the promise; (3) the reliance was expected and foreseeable by promisor; and (4) the promisee was injured as a result of reliance upon the promise.)
- (d) In the Fourth Cause of Action, the Plaintiffs sued AETN for Breach Fiduciary Duty. See Moore v. Moore 599 S.E. 2d 467, (S.C. App. 2004) (Partners are fiduciaries to each other and their relationship is one of mutual trust and confidence, imposing upon them requirements of loyalty, good faith and fair dealing. The relationship of a partnership is fiduciary in character and imposes on the members the obligation of refraining from taking any advantage of one another by the slightest misrepresentation or concealment.)
- (e) In the Fifth Cause of Action, the Plaintiffs sued AETN for Conversion. See Mullis v. Trident Emergency Physicians 570 S.E. 2d 549, (S.C. App. 2002) (Conversion is defined as unauthorized assumption and exercise of rights of ownership over goods or personal chattels belonging to another, to alteration of their condition or to exclusion of rights of owner.)

- (f) The Plaintiffs have sued all the Defendants in the Sixth Cause of Action for Misappropriation of Trade Secrets and Proprietary information.
- (g) The Plaintiffs have sued all of the Defendants in the Seventh Cause of Action for Unfair Trade Practices. Pursuant to Section §39-5-20, Code of Laws, South Carolina “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”
- (h) The Plaintiffs have sued all Defendants in the Eight Cause of Action for Constructive Trust and Accounting. See SSI Medical Services, Inc. v. Cox 392 S.E. 2d 789, (S.C. 1990) (A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.)
- (i) The Plaintiffs, in their Ninth Cause of Action seek a Preliminary and Permanent Injunction Against all Defendants.

5. Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02:

RESPONSE: Plaintiffs will identify their experts and complete their discovery in accordance with the scheduling order.

6. The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order. See generally Local Civil Rule 16.02 (C).

RESPONSE: Plaintiffs are unaware of any special circumstances.

7. The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.

RESPONSE: Plaintiffs are not aware of any additional information requested in the Pre-Scheduling Order or otherwise requested by the assigned judge.

Respectfully submitted,

CISA & DODDS, LLP

s/Frank M. Cisa

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Attorney for Plaintiffs

November 11, 2006
Mt. Pleasant, SC

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CHARLESTON DIVISION

TRADEMARK PROPERTIES,)
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SCHEDULING ORDER

A&E TELEVISION NETWORKS,)
)

Counterclaim Plaintiff,)
)

vs.)
)

TRADEMARK PROPERTIES, INC.)
and RICHARD C. DAVIS,)
)

Counterclaim Defendants.)
_____)

Pursuant to the Federal Rule of Civil Procedure (FRCP) and Local Civil Rule 16.02

(LCR), the Court establishes the following time limits in this case.

1. Motions to join other parties and to amend the pleadings shall be filed no later than the close of discovery.
2. The Plaintiffs shall comply with FRCP 26(a)(2) no later than 90 days after the date of this Order and the Defendants shall do so no later than 120 days after the date

of this Order.

3. Compliance with FRCP 26(a)(3) and LCR 16.02 (D)(3), 26.05 and 26.07 shall be had within the times specified therein.
4. Discovery, including all depositions, shall be completed and compliance with LCR 16.03 shall be had no later than 150 days after the date of this Order.
5. Dispositive motions, except those made pursuant to Rule 12 of the FRCP, shall be filed no later than 30 days after discovery is completed.
6. Mediation shall be completed in the manner prescribed by LCR 16.04-16.12 no later than 180 days after the date of this Order.
7. This case should be ready for trial no later than 210 days after the date of this Order.

AND IT IS SO ORDERED.

C. WESTON HOUCK
SENIOR UNITED STATES
DISTRICT JUDGE

Dated: _____, 2006
At Charleston, South Carolina

I CONSENT:

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