

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

TRADEMARK PROPERTIES, INC., a ) Civil Action No. 2:06-cv-2195-CWH  
South Carolina corporation; RICHARD C. )  
DAVIS, an individual, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
A&E TELEVISION NETWORKS, and )  
MAX WEISSMAN PRODUCTIONS, )  
INC. d/b/a DEPARTURE FILMS, )  
)  
Defendants. )  
\_\_\_\_\_)  
A&E TELEVISION NETWORKS, )  
)  
Counterclaim Plaintiff, )  
)  
vs. )  
)  
TRADEMARK PROPERTIES, INC. and )  
RICHARD C. DAVIS, )  
)  
Counterclaim Defendants. )  
\_\_\_\_\_)

**Declaration of Nancy Dubuc**

Nancy Dubuc declares:

1. Since March 2003, I have been a senior executive responsible for the development of nonfiction programming at A&E Television Networks (“AETN”). From 2003 to January 2007, I held a number of senior positions at AETN’s A&E cable

network. Currently I am Executive Vice President and General Manager of the History Channel, another AETN cable network. My experience in the television industry also includes four years at an independent production company, producing shows for Discovery Communications, Inc.; three years in television production at PBS; and approximately a year and a half as a producer for the television unit of the Christian Science Monitor. I am a member of the Non-Fiction Peer Group of the Executive Committee for the Academy of Television Arts & Sciences and an advisor to the Museum of Television and Radio. I make this declaration on personal knowledge in support of defendants' motion for summary judgment.

2. I am familiar with AETN's practices in the nonfiction television programming area as well as with cable industry practice generally. For many years the A&E network has aired popular nonfiction or "reality" shows. In particular, AETN and other networks have run many programs about home renovation and resale. These programs include "Property Ladder" on The Learning Channel, which premiered in June 2005; "Flip That House" on The Learning Channel, which premiered in July 2005; "The Big Flip" on Home & Garden Television, which premiered in October 2006; A&E's own "Sell This House," which premiered in July 2003; and the show at issue in this case, "Flip This House," which premiered in July 2005.

3. During my tenure, the A&E network used a standard legal and business structure for reality shows that, in my experience, is also typical for the cable industry. AETN retained a third-party production company to film and edit each show on a "work for hire" basis, with AETN retaining all copyrights and other legal interests. The

production company was responsible for obtaining releases from the people who appeared on the shows. AETN kept all or virtually all advertising revenue for itself. Advertising revenue is the primary source of income for AETN, as it is for all broadcast and basic cable networks. Over the life of a successful reality show, gross advertising revenue can run into the tens of millions of dollars. A small percentage of secondary revenue sources, like video sales, sometimes was shared with the production company or others.

4. I dealt directly with Richard Davis from time to time in connection with “Flip This House.” The other people who dealt with Mr. Davis on behalf of AETN all reported directly or indirectly to me. Nobody had any authority to make a deal with Mr. Davis without my advance knowledge and approval.

5. I understand Mr. Davis claims that, in or about June 2004, A&E made a number of oral promises to him concerning the show at issue. I did not make, authorize or affirm any such oral promises in June 2004 or at any other time. To the best of my knowledge, nobody made any such oral promises to Mr. Davis.

6. Charles Nordlander was an independent contractor working on programming development for AETN from April 2004 until May 2005. Mr. Nordlander’s work was supervised by me. Mr. Nordlander had no authority to enter into any contracts on behalf of the A&E network or AETN. He had no authority over the allocation of advertising revenue.

7. The alleged oral agreement as described by Mr. Davis in this case would have represented a sharp departure from standard practice. In particular, I understand

that Mr. Davis claims that A&E orally promised that he and his company would retain an “ownership interest” in the show while A&E would pay all production costs. The standard practice of the A&E network during my tenure was for the network to retain all ownership interest in the shows for which the network financed production costs. I understand that Mr. Davis also claims that A&E orally promised to share all net revenues from the show on a 50/50 basis, including advertising revenues. The standard practice of the A&E network during my tenure was to retain all or virtually all advertising revenues for its own account. I am not aware of any instance in which the A&E network ever departed from these practices.

8. A 50/50 split of all net revenues would have been an especially sharp departure from standard practice. To the best of my knowledge, such a split has never been offered to anybody by the A&E network. I have worked with a number of cable networks in my career and have never encountered an agreement of this kind.

9. Any such agreement also inevitably would be complicated. There would have to be a detailed discussion of exactly which revenue streams would go into the total pool, and of exactly which expenses would be deducted to get from gross to net. AETN receives many different kinds of revenues, such as advertising revenues from commercials purchased to run on specific shows, revenues from commercials purchased to run on the network generally, DVD sales, payments from cable operators and syndication fees. AETN also incurs many different kinds of expenses, such as uplinking fees, distribution costs, marketing costs, website costs, general office overhead and the cost of selling advertising.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York this 30 day of March, 2007.

  
\_\_\_\_\_  
Nancy Dubuc

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**NOTICE OF FILING OF DECLARATION OF NANCY DUBUC**

I am hereby filing the attached Declaration of Nancy Dubuc, which was executed by Ms. Dubuc on March 30, 2007.

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Respectfully submitted,

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Charleston, South Carolina

April 2, 2007