

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.)
_____)

DEFENDANT DEPARTURE FILMS'
MOTION FOR RECONSIDERATION

Defendant Max Weissman Productions, Inc. d/b/a Departure Films (“Departure”) submits this memorandum in support of its motion, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, for reconsideration of the Court’s June 6, 2007 denial of its motion for summary judgment. Departure respectfully requests that the Court grant summary judgment on the unfair competition claim against it at this time. The claim is clearly without merit, and its dismissal would fully resolve this case as against Departure.

Departure is a small independent production company that was retained by A&E Television Networks (“AETN”) to produce the show “Flip This House” on a work for hire basis. Plaintiffs do not allege that Departure is a party to the alleged oral contract between Plaintiffs and AETN that is at the center of this case. It is undisputed that Plaintiffs granted Departure complete releases, including both a personal release and a location release. Jordan Decl. Ex. P. Plaintiffs expressly “release[d Departure and] its assigns and licensees from any and all claims that [Plaintiffs] have or might have by virtue of or arising out of . . . the ‘Program’ [Flip This House].” *Id.* Mr. Davis has never disputed that the releases are fully effective as between Plaintiffs and Departure. Although he contends he was orally promised that the releases would have no impact on his relationship with AETN (Jordan Decl. Ex. A, 3/8 Davis Tr. 219:16-220:2), that contention is not relevant here even if accepted as true.

The only remaining substantive cause of action against Departure is the unfair competition claim. Plaintiffs have characterized this claim as being based entirely on *AETN’s* conduct in not honoring *AETN’s* purported agreement with Plaintiffs. S.J. Opp. Br. at 12-13. Departure is not mentioned by Plaintiffs in the unfair trade practices section of their

brief (or, for that matter, in any part of the argument section of their brief). This claim against Departure also is specifically precluded by the releases.

Plaintiffs brought three other claims against Departure, but none of the three pose any obstacle to this motion. Count Six, regarding trade secrets, has been explicitly abandoned. *See* June 6, 2007 hearing transcript (“S.J. Transcript”) at 23:6-15. Counts Eight and Nine, seeking an accounting/constructive trust and injunctive relief, really are just descriptions of remedies. Based on our discussions with Plaintiffs’ counsel, we understand that Plaintiffs do not intend to pursue Counts Eight and Nine as independent causes of action although they reserve the right to pursue these remedies if they win on a substantive claim.

Summary judgment for Departure on the unfair competition claim thus would result in a complete dismissal of the case as against Departure. The Court observed on June 6 that it preferred to reach the non-contract claims at this time only if that would end the case or limit discovery. S.J. Transcript at 35:22-36:20; *see also id.* at 36:14 (Court states that it would be “very willing” to dismiss the non-contract claims in the future so as to limit issues for the jury). As to Departure, reaching the unfair competition claim at this time would have exactly those effects. It would completely eliminate Departure as a defendant in the case, and it would free Departure from having to produce damages discovery or any other party discovery.

For the foregoing reasons, Departure asks that the Court reconsider its June 6 decision to defer reaching the merits of the unfair competition claim, and dismiss that claim – and this case – as against Departure.

The undersigned counsel has consulted with Plaintiff’s counsel and requested his consent to this motion. Plaintiff’s counsel has taken that request under advisement.

Respectfully submitted,

NELSON MULLINS RILEY &
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Charleston, South Carolina