

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 A&E TELEVISION NETWORKS'**  
**MOTION FOR CLARIFICATION**

Defendant A&E Television Networks (“AETN”) submits this memorandum in support of its motion, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, for clarification of the Court’s June 6, 2007 oral order. AETN respectfully requests that the Court clarify its order to confirm that whether an oral contract actually exists, and whether any such contract is enforceable, remain open issues for future determination.

The thrust and purpose of the Court’s June 6 ruling was simply to deny summary judgment. This leaves open whether Plaintiffs and AETN actually had any oral agreement. *See, e.g., Kramer v. Remley*, No. 01 Civ. 0303 (RLC), 2002 WL 31323823, at \*2-3 (S.D.N.Y. Oct. 16, 2002) (following denial of summary judgment, “[c]redibility assessments and choices between conflicting versions of [a purported oral agreement] are matters for a jury”). It also leaves open whether any oral agreement is enforceable. *See, e.g., DeLago v. Robert Plan Corp.*, No. 04 Civ. 3193 (JFK), 2006 WL 1390428, at \*2 (S.D.N.Y. May 22, 2006) (because existence or non-existence of oral agreement was a question of fact, consideration of enforceability at summary judgment stage would be “premature”). Further discovery and trial may bring out relevant facts not found in the summary judgment record, making it especially appropriate that the June 6 ruling be limited to the denial of Defendants’ motion.

AETN brings this motion because the particular wording of the June 6 oral order could be read as going beyond mere denial of summary judgment. *See* June 6, 2007 transcript at 35:15-17 (“Based on the foregoing, it’s the conclusion of this court that there does exist an oral contract which, if believed by the jury, is enforceable”). To avoid any unintended implication that the Court has actually ruled that a contract exists or is

enforceable, AETN respectfully requests that the Court clarify its June 6 order to confirm that these issues remain open in this case. In particular, AETN respectfully suggests that the statement that “there does exist an oral contract which, if believed by the jury, is enforceable” appropriately would be amended to read that “there is an issue of fact as to the existence of an oral contract, which, if believed by the jury, may be enforceable.” This clarification would be useful to all parties for trial preparation.

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,

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June 20, 2007  
Charleston, South Carolina