

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,)
)
Plaintiffs,)

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

vs.)

A&E TELEVISION NETWORKS, and)
MAX WEISSMAN PRODUCTIONS,)
INC. d/b/a DEPARTURE FILMS,)
)
Defendants.)

**DEFENDANTS/COUNTERCLAIM
PLAINTIFF'S MOTION TO COMPEL
DISCOVERY RESPONSES OF
PLAINTIFFS/COUNTERCLAIM
DEFENDANTS AND MEMORANDUM IN
SUPPORT THEREOF**

_____)
A&E TELEVISION NETWORKS,)
)
Counterclaim Plaintiff,)

vs.)

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

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure, defendant/counterclaim plaintiff A&E Television Networks (“AETN”) and defendant Max Weissman Productions, Inc. d/b/a Departure Films (“Departure Films”) (collectively, “Defendants”), through their undersigned counsel, do hereby move this Court for an Order compelling plaintiffs/counterclaim defendants Trademark Properties,

Inc. and Richard C. Davis (together, "Plaintiffs") to fully respond to Defendants' discovery requests. In support of this motion and in accordance with Local Rule 7.04, Defendants show the Court as follows:

1. On December 8, 2006, Defendants filed a Motion to Compel Discovery Responses of Plaintiffs. The Motion to Compel concerned Plaintiffs' responses and amended responses to Defendants' First Set of Interrogatories and First Requests for Production. See Plaintiffs' responses served November 8, 2006 and December 22, 2006 which are attached hereto as Exhibit A.

2. On February 6, 2007, the Court issued a verbal order granting the Defendants' Motion to Compel.

3. On March 2 and March 12, 2007, Plaintiffs served Supplemental Responses to Defendants' First Request for Production and First Set of Interrogatories, respectively, which are attached as Exhibit B.

4. On March 8, 9, 15 and 16, 2007, Defendants deposed Plaintiffs and other fact witnesses identified by Plaintiffs.

5. On March 22, 2007, Defendants' counsel wrote to Plaintiffs' counsel requesting the production of several items which were identified in these depositions but which were not produced by Plaintiffs in discovery. See letter of Richard A. Farrier, Jr. to Frank M. Cisa dated March 22, 2007, attached hereto as Exhibit C. Defendants' counsel specifically requested that Plaintiffs produce the following items:

- a. A copy of the "Worst to First" pilot DVD. Ginger Alexander testified that the DVD might be in Mr. Davis' car, and that she could obtain a copy from the production company, TVP. Alexander Tr. 55, 57. Plaintiffs

previously represented that they would produce this item (see amended responses to Defendants' document requests, No. 2) but have not done so.

- b. All records of phone calls, via cellular or land line, between Mr. Davis and A&E during May or June 2004. Trademark Tr. 70-71; Davis 3/8 Tr. 112-13.
 - c. A letter from HGTV declining to move forward with the "Worst to First" project. Ms. Alexander testified that the letter was sent after "Flip This House" went on the air with A&E. Alexander Tr. 61.
 - d. A spreadsheet entitled "Equity Share Proposal" sent by Ginger Alexander to Jim Ford at Discovery. Ms. Alexander testified that this document was in her possession. Alexander Tr. 138.
 - e. All signature pages that Mr. Davis provided to TLC. Ms. Alexander testified that at least some of these pages are in Plaintiffs' files. Alexander Tr. 151.
 - f. A copy of a TV Guide advertisement for "Flip This House" that mentions a South Carolina real estate company. Mr. Davis testified that he clipped and saved the ad as a PDF. Trademark Tr. 123.
 - g. Mr. Davis testified about press coverage, possibly from Us Weekly magazine, indicating that famous actor Brad Pitt was upset with him in a way that somehow is traceable to A&E's conduct. Trademark Tr. 102. Defendants asked Plaintiffs to produce any and all press coverage, emails, or other documents in Plaintiffs' possession related to this claim.
6. On or about April 19, 2007, after receiving no response to the March 22, 2007 letter, Defendants' counsel again wrote to Plaintiffs' counsel regarding the outstanding items from the depositions. See E-Mail of Richard A. Farrier, Jr. to Frank Cisa dated April 19, 2007, attached hereto as Exhibit D.

7. On June 21, 2007, after receiving no response to the March 22, 2007 and April 19, 2007 correspondence, Defendants' counsel again wrote to Plaintiffs' counsel regarding Plaintiffs' deficient responses to the above-referenced discovery. See letter of Richard A. Farrier, Jr. to Frank Cisa dated June 21, 2007, attached hereto as Exhibit E.

Defendants' counsel specifically requested that Plaintiffs remedy the following additional deficiencies in their discovery responses:

- a. In Plaintiffs' amended answer No. 2 to Defendants' first set of interrogatories, Plaintiffs stated that they have "invoices and statements concerning the Plaintiffs' claim for damages." Defendants asked Plaintiffs to provide them with all such documents.
- b. Although Plaintiffs provided Defendants with an "Exhibit A" in response to Defendants' interrogatories Nos. 3 and 4 (requesting an itemization of all damages Plaintiffs seek to recover and all expenses or costs Plaintiffs alleged to have incurred), that exhibit contains merely a summary with no underlying information. Defendants asked Plaintiffs to provide them with all documents forming the basis for the numbers contained in the exhibit, especially those contained in page one (the "Hawthorn Suites" page) of the exhibit.
- c. Document request No. 5 was a request for documents sufficient to show Plaintiffs' financial condition at year-end for every year from 2003 to the present. Although Plaintiffs sent Defendants their year-end financial statements for the years 2003-2005, they did not provide such a statement for the year 2006. Defendants asked Plaintiffs to provide it.
- d. Document request No. 5 asked for "documents," which were defined to include "tax returns." Defendants did not receive any tax returns for Plaintiffs. Defendants asked Plaintiffs to produce tax returns, both for Richard Davis individually and for Trademark Properties, Inc., for every year from 2003 to the present.¹

¹ In telephone discussions, Plaintiffs' counsel has suggested that the tax returns are not relevant. They are. Plaintiffs have put their financial condition at issue through this lawsuit by contending that Defendants have caused them economic harm. Defendants believe that, rather than causing harm, they have benefited Plaintiffs by investing millions of dollars in a television show that is in effect a form of free national advertising for Plaintiffs. The returns also are relevant to see how, if at all, Plaintiffs have acknowledged to the tax authorities their purported economic interest in the show. Defendants are entitled to fully explore these issues. Because there is a protective order in place, Plaintiffs can produce the tax returns marked "confidential."

The June 21 letter also contained another request for those items that were identified during depositions and were responsive to Defendants' document requests, but were not produced in discovery.

8. Since June 21, 2007, the undersigned counsel has also called and emailed opposing counsel numerous times regarding the delinquent responses, most recently on October 31, 2007. See email from Robert H. Jordan to Frank Cisa dated October 31, 2007, attached hereto as Exhibit F.

9. To date, Defendants have received no response from Plaintiffs regarding these issues.

10. Based on the above facts and attached exhibits, Defendants respectfully request an Order compelling Plaintiffs to fully remedy the remaining deficiencies in their discovery responses as outlined in the March 22, 2007 and June 21, 2007 letters and set forth herein in paragraphs 5(a) through (g) and 7(a) through (d) above.

11. In addition, Defendants request that Plaintiffs be required to pay the amount of reasonable expenses incurred in obtaining the Order, including reasonable attorneys' fees and travel time to the hearing of this motion.

As evidenced by the attached exhibits and in accordance with Local Rule 7.02, the undersigned counsel has unsuccessfully attempted to resolve this matter prior to filing this motion.

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Respectfully submitted,

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November 30, 2007

Charleston, South Carolina