

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

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Trademark Properties, Inc., a South Carolina)
corporation, Richard C. Davis, an individual,)
)
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, Does)
I-20, Inclusive,)
)
Defendants)
)

2007 DEC 19 P 2:00

2:06-cv-2195-CWH

ORDER

On June 6, 2007, the Court denied the defendants' motion for summary judgment. On June 20, 2007, the defendant Departure Films moved for reconsideration, and the defendant A&E Television moved for clarification of the Court's order.

The defendant Departure Films argues that the Court should reconsider its order denying summary judgment on June 20, 2007. Departure Films claims that it is entitled to summary judgment as to the plaintiff's claim for unfair competition because the plaintiff signed an agreement, releasing Departure Films from any claims arising out of the television show Flip This House. Paragraph 53 of the amended complaint alleges that

[T]he defendants have engaged in unlawful, unfair and fraudulent business practices and/or unfair competition and/or unfair trade practices, and have utilized certain improper, unlawful and tortious means to unjustly enrich themselves, and to cause deliberate injury to Plaintiffs by, among other things, using, misappropriating and exploiting Plaintiffs' valuable ideas and concept as embodied and referenced in Plaintiffs' Project and in the Series for Defendants' own use and benefit, without the approval or participation of Plaintiffs.

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Court.

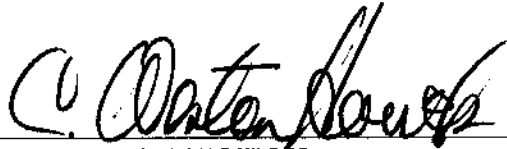
The plaintiffs appear to claim that Departure Films acted fraudulently. It is not certain as a matter of law that the plaintiffs agreed to release Departure Films from wilful fraud. In addition, Departure Films has failed to show that no genuine issue of fact remains for trial. Poller v. Columbia Broadcasting Sys., Inc., 368 U.S. 464 (1962). Therefore, the Court denies Departure Film's motion for reconsideration.

The defendant A&E Television Networks has moved this Court "to clarify its order to confirm whether an oral contract actually exists, and whether any such contract is enforceable." A&E Television Networks claims that the court's oral order "could be read as going beyond mere denial of summary judgment." A&E Television Network requests that the Court amend its statement that "there does exist an oral contract, which if believed by the jury is enforceable" 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." The Court denies A&E Television Network's motion for clarification and request for an amendment. The Court has denied the defendants' motion for summary judgment. When the Court began to orally rule on the defendants' motion for summary judgment, the Court stated "in my judgment, there are genuine issues of fact as to the existence of an oral contract between the parties." The Court's order should be read in its entirety rather than in a piecemeal fashion.

Departure Film's motion for reconsideration is denied. A&E Television Network's motion for clarification is denied.

AND IT IS SO ORDERED.

December 19, 2007
Charleston, South Carolina


C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

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