

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

TRADEMARK PROPERTIES, INC., ) CIVIL ACTION NO:
a South Carolina ) 2:06-cv-2195-CWH
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. )

CONDENSED

\* \* \* \* \*

VIDEOTAPED

DEPOSITION OF: RICHARD C. DAVIS

DATE TAKEN: Thursday, January 24, 2008

TIME: 10:00 a.m.

PLACE: Nelson Mullins Riley &
Scarborough
151 Meeting Street
Charleston, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter and Notary Public

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

1 put the reference to verbal agreements into the  
2 final signed version of the document?

3 A. You know what? If they had put that one  
4 in front of me, I would have signed it. If they  
5 had put that one in front of me, I'd sign it.  
6 Because to me I was saying, yes, I was allowed to  
7 speak with them. So I don't know that I ever saw  
8 that one.

9 Q. Mr. Davis, I'd love to get you out of  
10 here at a reasonable time today and it will help  
11 if maybe you'd just try to focus on the questions  
12 and maybe answer them a little more directly.  
13 You're free to talk to your counsel about that as  
14 well. But my question is, do you know who was  
15 responsible for adding the language in the final  
16 version of this document about verbal agreements?

17 A. No, I don't.

18 Q. Do you remember any discussion with  
19 Discovery about verbal agreements in particular?

20 A. No, I don't. I don't -

21 Q. You've talked about a meeting with  
22 Discovery. When did that meeting take place?

23 A. I would have brushed up on my e-mails if  
24 I knew you were going to ask that. I thought this  
25 was about money - excuse me - damages. I think

1 the business of theirs, Camilla Carpenter, and  
2 then Jim Ford. But in that initial meeting it was  
3 just me and Billy Campbell.

4 Q. Was there anybody else at this meeting  
5 on your side of the table?

6 A. Shoot. You know, I really - that  
7 meeting was - Ginger is usually with me. I don't  
8 recall - I would say if anybody was with me, it  
9 would have been Ginger, but I don't recall whether  
10 she went on that trip or not.

11 Q. And do you remember who among the people  
12 from Discovery asked you about your relationship  
13 with A&E?

14 A. I don't really recall.

15 Q. Do you recall, regardless of who said  
16 it, what was the substance of whatever questions  
17 you were asked about your relationship with A&E?

18 A. They were varied. I was pleasantly  
19 surprised on how - I felt like they were very  
20 respectful of - of competitors. I mean,  
21 basically, they didn't want to step on someone  
22 else's toes. They didn't - I don't know the  
23 legal verbiage, but I know they were basically -  
24 wanted assurance that I wasn't under an  
25 exclusivity agreement, that I could speak to them

1 we went over this last time. Exactly when I went  
2 there - I don't - I'm sure there's flight  
3 records that will show when I flew up there.

4 Q. Leaving aside the date, are we talking  
5 about one meeting or more than one where this  
6 discussion happened?

7 A. It was after - it was after - this is  
8 to the best of my recollection. It was - my  
9 recollection is we had finished up the last  
10 episode of season one and it was sometime after  
11 that.

12 Q. And was there one meeting with Discovery  
13 where the issue of your relationship with A&E was  
14 discussed or was it more than one that you  
15 remember?

16 A. It seems to me it was just one, when  
17 they were just saying, Are we allowed to talk to  
18 you?

19 Q. Who was at the meeting?

20 A. Nobody that works there anymore.

21 Q. Who was there?

22 A. In that meeting was Billy Campbell,  
23 David Abraham. It might have just been me and  
24 Billy at first. And then I think he brought in  
25 David and then Shawn Gallagher and somebody from

1 about a television series.

2 Q. Under exclusivity meaning what?

3 A. Like I couldn't do a show with anyone  
4 but A&E, which I thought was ridiculous because  
5 Departure Films, who was the production company  
6 that we hired, does stuff for HGTV and Court TV.  
7 And so I didn't even - I thought it was more a  
8 technicality. You know -

9 Q. Was the conversation at this meeting  
10 with Discovery just about whether you were  
11 personally free to appear on a new TV show for  
12 them?

13 A. I don't remember our conversations, but,  
14 yeah, basically, was I allowed - basically was I  
15 under an exclusive agreement or was I was allowed  
16 to do other shows? And they were - I told them  
17 what I wanted to do with The Real Deal, and they  
18 were - very much wanted to make sure it wasn't -  
19 they asked if I thought it was the same show. And  
20 I said, No, I don't think it's the same show, not  
21 at all.

22 Q. Did you say anything more about that,  
23 why you thought it wasn't the same show?

24 A. Well, we talked about three different  
25 ideas that I had. And the first one - the first

1 one was the series that ended up airing as The  
2 Real Deal.

3 Q. Was there any conversation at all in  
4 this meeting about your -- the verbal agreement  
5 that you claim to have with A&E that is the  
6 subject of this case?

7 A. I don't recall.

8 Q. So far as you know, they didn't ask any  
9 questions, you didn't make any statements about  
10 whether you had an oral agreement with A&E?

11 A. I don't recall exactly. I think my  
12 focus there was on pitching a TV series as a TV  
13 producer. I mean, nobody wants to recognize it or  
14 not, but I've got two shows on the air and they're  
15 both hits, but I'm not a TV producer.

16 Q. My question is real limited, so I'll ask  
17 it again and I'll ask you to just please focus in  
18 and try to answer it directly if you can. Did you  
19 tell the folks at Discovery in that meeting that  
20 you had this oral partnership agreement with A&E  
21 whereby you owned the show Flip This House?

22 A. They were very aware that I wouldn't  
23 sell the show, yeah. I had discussions with them.

24 Q. Are we talking about the same meeting?

25 A. No, no, no, no, not the same meeting.

1 I'm saying -- I took it to them first, if you all  
2 remember. I took the show to TLC first, way  
3 before A&E ever even knew about it.

4 Q. At any point in your negotiations with  
5 TLC that led to you doing the show with them, did  
6 you explain to them that you had an oral  
7 partnership agreement with A&E whereby you  
8 continued to own the show Flip This House?

9 A. Oh, anywhere in there? Were they aware  
10 of my situation with A&E? Is that what you're  
11 asking?

12 MR. FEIGELSON: Let me just have the  
13 question read back, please.

14 THE COURT REPORTER: The question was,  
15 "At any point in your negotiations with TLC  
16 that led to you doing the show with them, did  
17 you explain to them that you had an oral  
18 partnership agreement with A&E whereby you  
19 continued to own the show Flip This House?"

20 A. They were very specific that I was there  
21 to speak about a whole different show. And so,  
22 yeah, I was there -- you know, I went in and  
23 pitched three different shows, three different  
24 shows. The fact that they're all three about real  
25 estate, somebody in this genre seems to think

1 they're all the same. But I went in with three  
2 different specific shows to pitch. And their  
3 question to me was, Are you under exclusive  
4 agreement with A&E? And my answer was, No.

5 Would you be willing to put that in  
6 writing?

7 Absolutely.

8 Q. I'm going to try the question again --

9 MR. FEIGELSON: And, Counsel, I'll ask  
10 for your help here again.

11 Q. Mr. Davis, did you ever tell anybody at  
12 Discovery about your oral partnership agreement  
13 with A&E that you're suing over in this case?

14 A. Did I ever tell them -- did I ever tell  
15 them about it or in this meeting?

16 Q. Ever.

17 A. Ever? Oh, yes, absolutely. Billy  
18 Campbell knew, for sure.

19 Q. And what is the basis of you saying that  
20 Billy Campbell knew?

21 A. You know, you've figured me out by now.  
22 I went in to the top, the president of Discovery  
23 and said, you know, basically, Here is who I am;  
24 here is where I am; here is where I want to go.  
25 If you know Billy, he's very principled, Eagle

1 Scout, doesn't drink; this guy does everything by  
2 the book. And the first thing he said, Do you  
3 have the right to speak to us or are you under an  
4 exclusivity agreement with A&E? I said, No, I'm  
5 not exclusive with them.

6 Q. Other than telling Billy Campbell that  
7 you weren't under an exclusivity agreement with  
8 A&E, did you say anything about any other kind of  
9 agreement that you did have with A&E?

10 A. Yeah, I did. Behind closed doors with  
11 Billy, sure, I did. I probably vented a little  
12 bit about the way I felt I was treated by A&E,  
13 yeah.

14 Q. What did you say to Billy Campbell about  
15 your agreement with A&E?

16 A. That they weren't honoring it and that,  
17 you know -- the obvious question is, You've got a  
18 hit show. Why would you move?

19 Well, they're not honoring -- they're  
20 not honoring the agreement.

21 Q. What agreement did you tell Billy  
22 Campbell that you had with A&E?

23 A. Well, you know, again, they were well  
24 aware that I was not willing to sell the show.

25 Q. What agreement did you tell Billy

**Campbell that you had with A&E, if any?**

A. You mean, did I sit down and take notes and write it out and show it to them? I had a verbal conversation with Billy on what exactly, you know, my disappointment with A&E was, what exactly -- what was going on.

**Q. What did you tell Billy Campbell were the terms of your agreement with A&E that A&E wasn't honoring?**

A. That I was supposed to get 50 percent of the revenue and they have yet to pay me one dollar. And he was blown away; he was totally blown away with how a network let me go on -- bring a show that he knows I brought him first, put it on air, make me cover all the expenses or allow me to cover some expenses that should have been someone else and then put me on air. Honestly -- and, again, he was amazed. He was amazed at A&E. He was just absolutely amazed that they were yet to honor the agreement and I had yet to be paid a dollar. It was just not the way he does business.

**Q. So you told Billy Campbell in your one-on-one meeting with him --**

A. Right.

**than that what you said to Billy Campbell?**

A. I remember him telling me that, you know, Richard, we've got production companies that do a lot of shows for A&E and also do for a lot of channels that Discovery has. So that's not extraordinary within the business. I just want to make sure you're not under an exclusivity agreement.

That's -- I don't know if it's the first time I heard that word, but that's the first time that somebody in the business explained to me what exclusivity was.

**Q. Did you tell Billy Campbell that you would continue to own Flip This House and get your 50 percent revenue share going forward?**

A. I think I was pretty smarmy about it too.

**Q. Is the answer to my question yes?**

A. I think I said, If they want to keep doing that show without me and keep paying me, that's fine. That's fine. But the bottom line is, at this point, you know, it's my show. I didn't sell it. He asked me how much I got for the show.

**Q. So you think that Billy Campbell was**

**Q. -- that you had an agreement with A&E for a 50 percent revenue share?**

A. On the -- on the -- on the initial season of Flip This House, right. Because his question was, Why are you here?

**Q. Did you tell Billy Campbell anything else about the terms of any agreement you had with A&E?**

A. I don't remember exact wording. But he was the president of a network. I'm on a hit show competing against him, kicking their butt. And basically, he's wanting to know, Why are you here?

**Q. Other than telling Billy Campbell that you had an agreement with A&E for a 50 percent revenue share on season one, did you tell Billy Campbell that you had any other kind of agreement with A&E?**

A. I explained to him exactly -- I explained to him exactly -- he didn't know who Charles Norlander was. He knew who Nancy was; he didn't know who Charles was. And I explained to him who I spoke to and what had happened. And basically, he wanted affirmation that I was not under an exclusivity agreement.

**Q. Do you remember any more specifically**

**aware, based on your conversation, that you had a claim on future revenues from the A&E show?**

A. I feel confident of that.

**Q. Do you remember anything else about the conversation with Billy Campbell beyond what you've testified to so far?**

A. Yeah. We were -- he was like, What are you looking to do? And I pitched three ideas, and two of those we have done. And the third one is yet to be done. But I pitched three ideas underneath -- underneath the real estate umbrella. And he said, You feel like -- You feel like any of those are the same show you just did? I'm like, No. I want to get away from the word "flip" as fast as I can. This market is about to tank, and I want to be in a great position to show people that got caught up in all of this exuberance that it's getting ready to go the other way. I don't want be anywhere associated with the word "flip."

**Q. Beyond that, do you remember anything else about your conversation with Billy Campbell?**

A. Projecting what was going to happen in the real estate industry and why I thought that I was the premier expert and that -- why they needed me. That was -- I was pretty self-confident that

1 I had things lined up and I'd be able to show them  
 2 exactly what's going to happen in that. Because  
 3 his concern was, Do you think it's the same show?  
 4 And I said, Absolutely not. And he said - you  
 5 know, Billy is a very honorable person; I don't  
 6 know if any of you guys have ever met that guy,  
 7 but he does what he says and he was way  
 8 straight-up about, Richard, if you think this is  
 9 the same show, we're not going to do it.

10 And I proved my case to him that what  
 11 A&E wanted to do with the show - where they were  
 12 going with their facsimile of my show and then  
 13 what I wanted to do with these three new series  
 14 were four different shows.

15 MR. FEIGELSON: We need to change tapes.

16 Let's take a short break.

17 (The deposition went off the record.)

18 BY MR. FEIGELSON:

19 Q. Mr. Davis, back to the meeting with  
 20 Billy Campbell, the one-on-one meeting that you  
 21 were testifying about before the break -

22 A. Yes, sir.

23 Q. -- other than what you've testified to  
 24 already, do you remember anything you said to  
 25 Billy Campbell about your oral agreement with A&E?

1 was - after the word got out that we were in the  
 2 deal with A&E, that we got a letter from HGTV  
 3 saying, Thanks, but no thanks.

4 Q. So Exhibit 112 is a letter from HGTV  
 5 saying that they didn't want to pursue Worst to  
 6 First?

7 A. Correct.

8 Q. Mr. Davis, you can put that one aside;  
 9 we're done with that. When we deposed you  
 10 previously, Mr. Davis, you made a comment that  
 11 Brad Pitt was mad at you. Do you remember that?

12 A. I do.

13 Q. And we asked if there were any documents  
 14 about that, and your counsel has produced  
 15 something to us and I want to ask you about it.

16 A. Okay.

17 MR. FEIGELSON: Let's mark this as  
 18 Exhibit 113. This is a two-page document.  
 19 The Bates numbers are Trademark 2128 and  
 20 Trademark 2129. It's a cover of an issue of  
 21 US Weekly magazine, dated March 19th, 2007,  
 22 and the reprint of page 56 in that issue of US  
 23 magazine.

24 (Exhibit No. 113 was marked for  
 25 identification.)

1 A. No, sir.

2 Q. Other than that meeting with Billy  
 3 Campbell where you say that you told him about the  
 4 oral agreement with A&E, did you ever have any  
 5 other conversation with anybody at Discovery where  
 6 you told them about the oral agreement?

7 A. I don't recall.

8 Q. Mr. Davis, I'm going to move on to a  
 9 couple of documents that have been produced to us  
 10 since the last time we deposed you. I'm going to  
 11 ask the reporter to mark this as Exhibit 112.

12 (Exhibit No. 112 was marked for  
 13 identification.)

14 Q. This is a one-page document. The Bates  
 15 number is Trademark 2121, produced to us by  
 16 Trademark Properties. It's a one-page letter from  
 17 HGTV, dated November 7, 2004. Please take a look  
 18 at that, Mr. Davis.

19 A. Yes, sir.

20 Q. Have you seen Exhibit 112 before?

21 A. Yes, sir.

22 Q. What is it?

23 A. It was -- I submitted the Worst to First  
 24 to three networks. And my recollection -- and  
 25 maybe it's a selfish recollection -- when this

1 Q. Please take a look at the exhibit, Mr.  
 2 Davis, and let us know when you're ready to answer  
 3 a question.

4 A. Yes, sir.

5 Q. Is Exhibit 113 what you were talking  
 6 about when you said that Brad Pitt was mad at you?

7 A. Yes, sir.

8 Q. And how did you first come to see  
 9 Exhibit 113?

10 A. You know, anything associated with the  
 11 show Flip This House, it comes to me, either  
 12 through people who watch the show or -- it's just  
 13 pretty amazing, the name association. Anything  
 14 that happens with that show, people think of  
 15 Richard Davis.

16 Q. Do you remember specifically how you  
 17 first came to see this article from US Weekly?

18 A. I think a TV producer sent it to me  
 19 and -- I think a TV producer sent it to me and was  
 20 kind of joking that -- they told me that Brad Pitt  
 21 was mad at me.

22 Q. And just to be a little more specific  
 23 for the record, when we're looking at the second  
 24 page of the Exhibit, Trademark 2129, and there's a  
 25 little boxed article at the top with the headline,