

FEB 11 2004

JAMES W. MCCORMACK, CLERK
By _____
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION
DEP CLERK

MICHAEL GALSTER

PLAINTIFF

V.

NO 4:03-CV-01013 GTE

KELLY DUDA

DEFENDANT/COUNTERCLAIMANT

ANSWER TO SECOND AMENDED COMPLAINT
AND COUNTERCLAIM

COMES NOW THE DEFENDANT/COUNTERCLAIMANT, and as his answer and
counterclaim to the second amended complaint, states:

1. **Defendant/counterclaimant requests a trial by jury of all issues, whether stated within the answer or counterclaim, that are properly triable to a jury.**
2. Defendant/counterclaimant denies paragraph 1 of the Second Amended Complaint, stating that Plaintiff maintains a legal residence in Hot Springs, Garland County, Arkansas, but admits that this fact is without legal significance to this pleading other than as a reflection on the credibility of Plaintiff.
3. Admits paragraph 2.
4. Admits paragraph 3 of the complaint insofar as it states venue is properly before this Court; denies that any "acts" giving rise to a claim for relief occurred.
5. Admits paragraph 4 of the complaint.
6. Admits so much of paragraph 5 as relates to the novel "Blood Trail" but denies the rest

and affirmatively states that Defendant/counterclaimant holds the copyright to an original film entitled "Factor Eight: The Arkansas Prison Blood Scandal" to which he believes this paragraph refers. Defendant further states that he has applied for copyright protection on "Factor Eight: The Arkansas Prison Blood Scandal" with the Library of Congress with such application being made on or about December 29, 2003.

7. Denies that Plaintiff hired Defendant to work as an assistant director or that "Factor Eight: The Arkansas Prison Blood Scandal" was financed solely by Plaintiff. Plaintiff did, in fact, make a financial contribution to this film, but so did many other individuals, none of whom have claimed an equity interest in the film to date.
8. Denies paragraph 7.
9. Admits so much of paragraph 8 as deals with the fact of the National Public Radio interview. Denies the balance of the paragraph and specifically denies that Plaintiff rather than Defendant is the owner of "Factor Eight: The Arkansas Prison Blood Scandal".
10. Denies paragraph 9 in its entirety.
11. Denies paragraph 10 in its entirety.
12. Denies paragraph 11 in its entirety and affirmatively states that Plaintiff has produced no work of audiovisual art to "distort".
13. Denies paragraph 12 in its entirety.
14. Denies paragraph 13 and that Plaintiff is entitled to and should have been or should be given in future any injunctive relief.
15. Denies paragraph 15 in its entirety.

WHEREFORE, Defendant/counterclaimant prays that the complaint be dismissed and held for naught, and that he receive attorney fees and costs and all other just and proper relief

COUNTERCLAIM

PLEADING FURTHER, DEFENDANT/COUNTERCLAIMANT states:

16. He incorporates all matters set forth in the answer herein just as though set out line for line and word for word herein.
17. Defendant/counterclaimant is the author of a work of audiovisual art entitled "Factor Eight: The Arkansas Prison Blood Scandal" which is unrelated to either "Blood Trail" or to the film "Factor Eight", unless, of course, the latter represents a pirated copy of his film which has been submitted to the Library of Congress as Plaintiff's own work for registration of the copyright.
18. "Factor Eight: The Arkansas Prison Blood Scandal" was conceived based upon the same set of events as inspired "Blood Trail" but expresses the ideas related to this story in a different way, treating them as history instead of the factual basis for a work of fiction.
19. It is rather Plaintiff who has acted to "steal" Defendant/counterclaimant's work.
20. Factor Eight: The Arkansas Prison Blood Scandal" has been submitted to the United States Library of Congress for Copyright protection under Title 17. This submission occurred the better part of a month prior to the belated submission of whatever materials Plaintiff herein submitted.
21. Defendant has a First Amendment right to exhibit his work at any film festival of his choosing because he is the owner of the work of audiovisual art.
22. Defendant produced this film with financing from Plaintiff along with at least five (5) other individuals including Defendant/counterclaimant's own father. Plaintiff can claim no interest in the film as there was no contract to share the profits or the credit for it.
23. Plaintiff has taken control of Defendant's property and has committed the tort of

conversion under the laws of the State of Arkansas; he should be held to answer in compensatory and punitive damages for this tort.

24. In the alternative, if there was an agreement between the parties, then Defendant/counterclaimant is at least a 30% owner of the film and has an absolute right as part owner to show or exhibit the film, albeit he must split the profits with Plaintiff.
25. In the alternative, if, as Plaintiff claims, Defendant/counterclaimant was an employee, being paid a sum of \$400.00 per week, then Defendant is due a great deal of overtime at the rate of \$15.00 per hour under the Fair Labor Standards Act in that he spent considerably more than 40 hours each week working on the film in question. The amounts of such back wages will be proven at trial, if it is found by the jury that such are applicable.
26. Plaintiff also has failed and refused to pay the employer's share of Social Security taxes and other similar required benefits, if Plaintiff were indeed an employee, and should immediately be required to reimburse Plaintiff ½ of his self-employment taxes paid to these programs. The amounts of such wages will be proven at trial if such are found to be available.
27. Defendant/counterclaimant specifically reserves the right to amend this pleading and to state additional causes of action if such should become desirable or necessary after discovery.

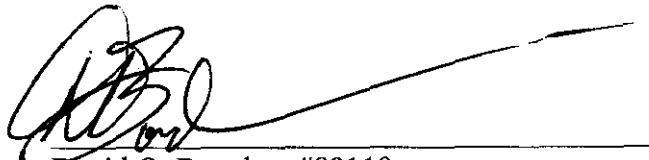

JURY DEMAND

28. **Defendant/counterclaimant requests a jury trial of all issues of the complaint and counterclaim that are properly triable to a jury.**

WHEREFORE, Defendant prays that he have judgment on the counterclaim, that he have

an injunction to require Plaintiff to return his converted property, that he have compensatory and punitive damages as outlined herein above, that he have his costs, attorney fees, and all other just and proper relief, premises considered.

Respectfully submitted,


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for Kelly Duda

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the individual(s) indicated herein below by placing a copy of same in the United States Mail, postage prepaid, or by such other service as may be indicated herein.

Dated this 16th day of Feb, 2004

Joseph W. Woodson, Jr., 400 W. Capitol Ave, Suite 2990, Little Rock, AR. 72201

