

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

WESTPAW FILMS INC., directly and
derivatively on behalf of the D&D Production,

Index No. 505665/2014

Plaintiff,

-against-

JAMES SPRATTLE, MICHAEL ANDREW
PASCAL, and FANTASY GAME FILMS
LLC,

**AFFIRMATION OF ADAM B. KAGAN IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

Defendants,

and

the D&D Production,

Nominal Defendant.

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

Pursuant to N.Y. C.P.L.R. § 2106, ADAM B. KAGAN affirms as follows:

1. I am the principal attorney of Kagan & Co., PLLC. I am admitted to practice in the State of New York. Though I do not appear for Defendants in this action, my firm has represented non-party Iconoscope Films LLC (“Iconoscope”) and Defendants James Sprattley and Andrew Pascal (collectively, the “Iconoscope Parties”) on matters related to this action.

2. Prior to May 23, 2013, Plaintiff Westpaw Films Inc. and non-party Anthony Savini (collectively “Westpaw”) and the Iconoscope Parties engaged in mediation discussions to try to resolve differences and figure out a way to continue

working together on their film project, referred to in the Complaint as the “D&D Production.” The mediation failed to produce a resolution. As a result, Iconoscope sought my help in finding a resolution.

3. I learned that Iconoscope had already informed Westpaw that the partnership was over. Toward that end, on or about May 30, 2013, I sent a proposed draft producer/director loan-out agreement with customary industry terms to Westpaw’s counsel. This type of agreement attempted to establish what was essentially an employment relationship between the parties as a way to complete the film. A true and correct copy of that proposed agreement is attached hereto as Exhibit A.

4. On June 3, 2013, I received a letter from Westpaw’s counsel, Greg Mavronicolas, which confirmed Westpaw’s view that no partnership existed at that time, and went so far as to take the position that it never did exist. His letter states, in part:

My client has spent considerable time, money and effort creating the footage under his well-established production company. In doing so he utilized very expensive equipment over a course of months, the value of which well exceeds \$50,000.00 in costs of equipment alone. ***It is my understanding that it was the intention of all parties that his production company, Westpaw Films, Inc., would own his footage***, and it was not until approximately six months into production that your clients’ production company, Iconoscope Films LLC, was even established. Further, to the best of my knowledge ***no formal joint authorship agreement was ever entered into, as such it is our position that he maintains sole ownership of this material*** and is unwilling to sign away his rights in this material. That being said, he is sensitive to the prospect ***of allowing your clients’ to participate in this project.***

See Exhibit B, attached hereto (emphasis added).

5. Then, on June 19, 2013 Westpaw’s counsel, requested changes to the proposed draft producer/director agreement. A true and correct copy of that proposed agreement containing Westpaw’s counsel’s comments is attached hereto as Exhibit C.

Such agreement again clearly stated Westpaw's view that it owned all the footage for the film.

6. Early on in my negotiations with Westpaw's counsel Mr. Mavronicolas, Westpaw requested a non-compete clause in the agreement we were discussing that would have prohibited my clients from competing with the D&D Production with any other gaming film, including any other movie about D&D. I flatly refused that request. Then, on or about September 10, 2013, in a telephone call with Westpaw's counsel Peter Dee, counsel again requested a non-compete clause in the settlement agreement. On behalf of my clients I again unequivocally rejected his proposal.

7. On or about October 25, 2013, Westpaw's attorneys provided a new draft settlement agreement to distill the issues between the parties. This draft did not contain a non-compete clause – not surprisingly since I had already twice rejected that concept. A true and correct copy of Westpaw's proposed settlement agreement is attached hereto as Exhibit D.

8. Though Westpaw and the Iconoscope Parties continued to negotiate, at no time after my second rejection of the non-compete in early September 2013 was a non-compete clause again proposed by Westpaw's counsel. The settlement agreement was finally signed on or about December 5, 2013 by both Westpaw and Iconoscope after almost seven months of negotiation and does not contain a non-compete clause.

9. To my knowledge, the first time Westpaw objected to the film currently being made by defendants was in a letter from Westpaw's counsel to me dated January 22, 2014. A true and correct copy of this letter is attached as Exhibit E. The letter was

first sent to the Iconoscope Parties by email from Mr. Savini, and they forwarded it to me. A copy of that email from Mr. Savini is attached hereto as Exhibit F.

I hereby affirm under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
July 21, 2014



Adam B. Kagan