

COMMERCIAL DIVISION
PRELIMINARY CONFERENCE ORDER
PURSUANT TO PART 202 OF THE UNIFORM CIVIL RULES
FOR THE SUPREME COURT KINGS COUNTY

Date Sept 9 2015

Westpan Films Inc., directly &
derivatively on behalf of the DTD
Production Plaintiff(s)

-against-

Sprattly, James, Michael Andrew
Pascal & Fantasy Game Films LLC. Defendant(s)

Index # 505665/14

Plaintiff Westpan Films Inc. is represented by
Firm: Maurinole & Lee LLP
Responsible attorney: Peter Lee
Address: 415 Madison Ave Fl 18
E-mail: pdee@maurinole.com
Telephone: 646 770 1256 Fax: 866 774 9004

Defendant James Sprattly, M.A. Pascal & Fantasy Game Films is represented by
Firm: OFSHTEIN LAW FIRM
Responsible Attorney: Suzy Rose Esq., Of Counsel OFSHTEIN LAW FIRM
Address: 1723 E 12th St - 4th - Brooklyn NY 11229
E-mail: SUZY ROSE ESQ @ AOL.COM
Telephone: 201 433 6705 Fax: 201 433 3618

Defendant _____ is represented by
Firm: _____
Responsible Attorney: _____
Address: _____
E-mail: _____
Telephone: _____ Fax: _____

Defendant _____ is represented by

Firm: _____

Responsible Attorney: _____

Address: _____

E-mail: _____

Telephone: _____ Fax: _____

Nature of the Case:

(a) Plaintiff's Claims / Counterclaim Defenses

P claims for Breach of Fiduciary Duty, Accounting + Fraudulent Conveyance, Conversion, Fraudulent Inducement, Unfair Competition, Unjust Enrichment, constructive trusts, Deduction of Alter Ego
Amount Demanded: \$ 46d

(b) Defendant Call D's 's Claims / Defenses

Failure to state claim / unclear words / Failure to join necessary party
failure to plead fraud w/ particularity
Amount Demanded: \$ Legal fees

Defendant _____ 's Claims / Defenses

Amount Demanded: \$ _____

Defendant _____ 's Claims / Defenses

Amount Demanded: \$ _____

Defendant _____ 's Claims / Defenses

Amount Demanded: \$ _____

IT IS HEREBY ORDERED THAT THIS ACTION IS ASSIGNED TO THE

EXPEDITED STANDARD COMPLEX TRACK

AND DISCLOSURE SHALL PROCEED AS FOLLOWS:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):

(a) Demand for a bill of particulars shall be served by all parties by Oct 25, 2015 on or before _____

(b) Bill of Particulars shall be served by all parties on or before 11/16/15

(c) BILL OF PARTICULARS SERVED:

Satisfactory

Unsatisfactory - because:

(2) DOCUMENT PRODUCTION/ DISCOVERY AND INSPECTION:

(a) All Demands for Discovery and Inspection (CPLR 3120) shall be served not later than 11/2/15 days from the date of this Order.

(b) All responses to Discovery and Inspection demands shall be served not later than 30 days after receipt of the opposing party(ies) demand(s).

(c) All demands for production of books, documents, records and other writings relevant to the issues in this case shall be deemed to include a demand for production of any photograph(s), audio tape(s), video tape(s), computer disk(s) or program(s) and e-mail. The failure to comply herewith may result in preclusion from the introduction of such evidence.

(3) INTERROGATORIES: Limited to 25 questions per party

(a) Interrogatories shall be served by all parties on or before 11/2/15

(b) Answers to interrogatories shall be served by all parties on or before 11/30/15

(4) **DEPOSITIONS:** To be held as follows:

(Priority shall be in accordance with CPLR 3106 unless otherwise agreed or ordered)

Party	Date	Time	Place
Plaintiff	12/14/15	U	TBD
James Sprattley	12/15/15		↓
Michael Pascal	12/16/15		

FAILURE TO APPEAR FOR DEPOSITION AS SCHEDULED WILL BE DEEMED A WAIVER. FAILURE TO PRODUCE A SPECIFIED WITNESS FOR DEPOSITION WILL PRECLUDE SUCH WITNESS'S TESTIMONY AT TRIAL ON BEHALF OF THE PARTY FAILING TO PRODUCE. SUCH PARTY MAY ALSO BE DEEMED TO HAVE WAIVED THE DEPOSITION OF THE OPPOSING PARTY.

(5) **OTHER DISCLOSURE:**

(a) Commissions or letter rogatory (CPLR 3108): Identify and set forth the location of each witness:

by 12/15/15

(b) Expert disclosure (CPLR 3101[d])

Plaintiff(s) shall provide expert disclosure by 12/16/15

Defendant(s) shall provide expert disclosure by 12/31/15

(6) **PRESERVATION OF ELECTRONIC EVIDENCE:**

(a) The term ESI shall include, but not be limited to, e-mails and attachments, voice mail, instant messaging and other electronic communications, word processing documents, text files, hard drive spreadsheets, graphics, audio and video files, databases, calendars, telephone logs, transaction logs, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information and backup materials, Native Files and the corresponding Metadata which is ordinarily maintained.

(b) Within 10 days of the execution of this PC Order, all signatories hereto shall, in compliance with Rule 8(b) of the Uniform Commercial Division Rules (22 NYCRR 202.70), submit to the Court a copy of the agreed written plan/stipulation for the preservation of ESI related documents, data and tangible things reasonably anticipated to be subject to discovery in this action. Such plan, which may be updated, shall identify the categories of ESI to be preserved, individuals responsible for preservation, maintenance and production of ESI and issues relating to potential costs of maintenance, preservation and production of ESI. In the alternative, counsel may stipulate to limit and/or eliminate the discovery of ESI in whole or part and/or forego or limit the production of information in electronic form. A copy of such stipulation must be submitted to the court within 10 days of this Order.

(c) For the relevant periods relating to the issues in this litigation, each party shall take all reasonable steps (including suspending aspects of ordinary computer processing and/or backup of data that may compromise or destroy ESI) necessary to maintain and preserve such ESI as may be (i) relevant to the parties' claims and/or defenses, or (ii) reasonably calculated to lead to the discovery of admissible evidence, including but not limited to all such ESI data generated by and/or stored on the party's computer system(s) and/or any computer system and storage media (i.e., internal and external hard drives, hard disks, floppy disks, memory sticks, flash drives and backup tapes), under the party's possession, custody and/or control. The failure to comply herewith may result in appropriate sanctions or such other relief as the court may be authorized to impose or award, including but not limited to precluding use of evidence, taking adverse inferences, and/or rendering judgment in whole or part against the offending party(ies).

(d) (i) When ESI is produced, it shall be produced on appropriate electronic media (i.e. CD, DVD or portable hard-drive) in the following format(s), as may be agreed:

Digital images endorsed with numbers and confidentiality legends, searchable text and agreed-to metadata fields with regard to the following data:

Native Format with metadata intact and, as appropriate under the circumstances, endorsed with numbers and confidentiality legends with regard to the following data:

The following format, as agreed by the parties, with regard to the following data:
Documents and files to be exchanged in a format to be agreed upon by attorneys.

(ii) In the absence of an agreement by the parties, the court shall direct the manner of production upon application of the party(ies).

(e) Issues with regard to cost shifting shall be brought to the attention of the Court as soon as practicable.

(7) CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT:

(a) In the event that there is a need for a Confidentiality/Non-Disclosure Agreement prior to disclosure, the party(ies) demanding same shall prepare and circulate the proposed agreement. If the party(ies) cannot agree as to same, they shall promptly notify the Court. The failure to promptly seek a confidentiality agreement may result in a waiver of same.

(b) All parties anticipates the need for a Confidentiality Agreement as to the following issues:

Confidential communications, financial data, proprietary forecasts, settlements, negotiating documents

(8) DISCOVERY - RELATED DISPUTES:

Issues relating to disclosure shall be resolved between counsel without Court intervention whenever possible. If Court intervention becomes necessary, a conference call may be arranged with the Judge or Law Clerk pursuant to Kings County Commercial Division Rule 18 and must take place prior to any motions being made.

(9) **INSURANCE COVERAGE** (IF APPLICABLE): N/A, subject to review.

(10) **IMPLEADER:** Shall be completed on or before 12/31/15

(11) **END DATE FOR ALL DISCLOSURE:** 2/26/16

(12) ALTERNATIVE DISPUTE RESOLUTION:

Requested by defendants
 Declined by plaintiff

(13) **COMPLIANCE CONFERENCE:** Shall be held on 1/13/16

(14) **NOTE OF ISSUE:** A note of issue/certificate of readiness shall be filed on or before 3/31/16. Failure to file a note of issue by this date may result in the dismissal of this action.

(15) **MOTIONS:** Any dispositive motion(s) shall be made returnable on or before 5/4/16

~~(16) **FINAL SETTLEMENT CONFERENCE:** A final settlement conference, at which the parties must be present, shall be held on 9/16~~

THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED OR MODIFIED EXCEPT WITH APPROVAL OF THE COURT.

IN THE EVENT OF NON-COMPLIANCE WITH THE TERMS OF THIS ORDER, COSTS OR OTHER SANCTIONS MAY BE IMPOSED, INCLUDING PRECLUSION OF EVIDENCE.

IF A SETTLEMENT IS REACHED, THE COURT SHALL BE PROMPTLY NOTIFIED AND A COURTESY COPY OF THE STIPULATION OF DISCONTINUANCE SHALL BE PROMPTLY FORWARDED TO THE COURT. PLAINTIFF IS RESPONSIBLE FOR FILING THE STIPULATION WITH THE COUNTY CLERK AND SHALL PAY THE FEES UNLESS OTHERWISE AGREED BETWEEN THE PARTIES AS PART OF THE WRITTEN STIPULATION.

