

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE WEINSTEIN COMPANY, LLC, :
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 Plaintiff, :
 :
 vs. :
 :
 CINETIC MEDIA, INC., JOHN SLOSS AND :
 BART WALKER, :
 :
 Defendants. :
 :
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Index No.
Date Purchased:
Plaintiff Designates New York
County as the place of trial.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff’s Attorneys within 20 days after service of the summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.


Plaintiff designates New York County as the place of venue. Pursuant to CPLR §§ 503(a) and (c), venue is proper because Plaintiff’s principal offices are located at 375 Greenwich Street, New York, New York, 10013 and Defendants’ principal offices are

located at 555 West 25th St. (4th Floor), New York, NY, 10001.

Dated: Armonk, NY
February 4, 2009

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP

By: 

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TO:

Cinetic Media, Inc.
555 West 25th St. (4th Floor)
New York, NY, 10001

John Sloss
555 West 25th St. (4th Floor)
New York, NY, 10001

Bart Walker
555 West 25th St. (4th Floor)
New York, NY, 10001

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE WEINSTEIN COMPANY, LLC,	:	Index No.
	:	
Plaintiff,	:	IAS Part
	:	Justice
vs.	:	
	:	COMPLAINT
CINETIC MEDIA, INC., JOHN SLOSS AND	:	
BART WALKER,	:	
	:	
Defendants.	:	
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Plaintiff The Weinstein Company, LLC (“TWC”), for its Complaint against Defendants Cinetic Media, Inc. (“Cinetic”), John Sloss and Bart Walker alleges as follows:

NATURE OF THE ACTION

1. This case arises from Defendants’ fraudulent misrepresentations and promises to TWC relating to distribution and licensing rights to the critically acclaimed motion picture *Push: Based on the Novel by Sapphire* (“*Push*”).

2. On January 27, 2009, two days after *Push* won three awards at the Sundance Film Festival, Defendants engaged TWC in negotiations and ultimately concluded an agreement under which TWC acquired the worldwide licensing and distribution rights for the motion picture *Push* (the “Agreement”). Although TWC and Defendants reached a definitive agreement for the worldwide licensing and distribution rights to *Push* on January 27, 2009, Defendants could not sell TWC the international rights because those rights were previously contracted to Elephant Eye Films (“Elephant Eye”). Additionally, unbeknown to TWC, even after Defendants entered into the Agreement with TWC, they continued to actively engage in selling the North American distribution rights to TWC’s competitor, Lions Gate Entertainment Corp. (“Lionsgate”), and

ultimately entered into an agreement with Lionsgate for the North American licensing and distribution rights to *Push*.

PARTIES

3. TWC was created in 2005 by Bob and Harvey Weinstein, the brothers who founded Miramax Films Corporation. TWC is a multi-media company that has released some of the most critically acclaimed and commercially successful independent feature films. It has received over 250 Academy Award nominations and won 60 Oscars. TWC and its affiliated companies have generated billions of dollars in worldwide box office receipts and billions more in home video sales. TWC is a Delaware limited liability company with its principal place of business at 375 Greenwich Street, New York, New York, 10013.

4. Defendant Cinetic is a corporation organized under the laws of New York with its principal place of business at 555 West 25th St., New York, New York, 10001. According to Cinetic's website, Cinetic "is a leading provider of strategic advisory services to the entertainment and media industries" whose "clients range from multi-national media companies to individual motion picture producers and directors."

5. Defendant John Sloss is a citizen of the State of New York and the founder of Cinetic. Sloss is also a managing partner and founder of the entertainment law firm Sloss Eckhouse Brennan LLP.

6. Defendant Bart Walker is a citizen of the State of New York and a partner at Cinetic.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over the defendants pursuant to CPLR §§ 301 and 302 because Defendants are residents of the State of New York and transact business in the State of New York.

8. Venue in this Court is proper pursuant to CPLR § 503.

FACTUAL ALLEGATIONS

I. BACKGROUND

9. *Push* is a motion picture drama based on a 1996 novel about the trials of a young African-American mother in Harlem in 1987. The film is directed and produced by director Lee Daniels.

10. *Push* is only the third film in the history of the prestigious Sundance Film Festival to win both the grand jury prize and the audience awards in the U.S. dramatic competition. One of the film's stars, Mo'Nique, was also honored with a special jury prize. An illustration of the movie's quality and potential success is provided by popular talk show host Oprah Winfrey, who publicly commented that she had never seen a film like *Push*, which was "so raw and powerful" that "it split me open." Acclaimed actor and filmmaker Tyler Perry also stated that he was "immensely moved" by the film and "wanted to do whatever [he] could to help others share in its redemptive experience."

11. On January 24, 2009, executives from TWC traveled to Park City, Utah to meet with Defendants, who acted as representatives of the owners of *Push*, to discuss the possibility of TWC purchasing the exclusive worldwide licensing and distribution rights to *Push*. TWC and the Defendants continued negotiations from January 24, 2009 until January 27, 2009.

12. On January 27, 2009, the Defendants offered TWC worldwide distribution rights on behalf of the owners of *Push* on the condition that TWC agree to a series of specific terms and demands. The offer expressed by Defendants was definite, certain, and manifested the intent to form a binding contract to sell worldwide distribution rights to *Push*, subject only to TWC's acceptance of their specific terms and demands.

13. These terms included an allotment of all distribution rights in all media and in any formats or technologies, a territory that included the "universe," a minimum guarantee that was to be payable on a specific schedule, a distribution fee that varied by territory, payment of specific bonuses for box office performance, payment of specific bonuses if the film should win certain awards and preservation of editing rights.

14. At no time during the course of the parties' negotiations or in connection with Defendants' definitive offer of exclusive worldwide distribution rights to TWC, did Defendants indicate that they were unable to sell TWC international distribution rights because those rights were in fact previously contracted to Elephant Eye.

15. On January 27, 2009, TWC contacted Defendants and unequivocally accepted Defendants offer. At that time, TWC agreed to all of the terms and demands that Defendants included in their offer. At the end of the conversation Defendants promised TWC that they would immediately provide TWC with a written licensing and distribution agreement memorializing the terms of the Agreement. In exchange, TWC promised to immediately execute and return such written licensing and distribution agreement to Defendants.

16. At approximately 6:29 p.m. on January 27, 2009, David Glasser of TWC sent an e-mail to Sloss and Walker reiterating TWC's acceptance of the offer. In the e-mail, Glasser stated that he was:

pleased to confirm on behalf of the Weinstein Company LLC that we have accepted the terms of your last proposal made by you during our breakfast meeting this morning and our subsequent telephone conversation with respect to the acquisition of the exclusive worldwide distribution rights in and to the feature film presently entitled *Push: Based on a Novel by Sapphire*.

17. Consistent with the fact that the parties had reached an agreement on distribution rights to *Push*, Walker immediately replied by e-mail that he was “explaining every sentence” of the agreement to *Push*’s producers and financiers. He did not deny the existence of the Agreement. Walker also communicated to TWC that he was preparing the paperwork necessary to document the deal and would immediately send it to TWC, as previously promised.

18. At 7:05 p.m. on January 27, 2009, Glasser again stated in an e-mail to Walker that he was “glad to confirm that we have a deal.” Walker replied by e-mail that he was “explaining every detail” of the Agreement to *Push*’s producers and financiers. Again, Walker failed to deny the existence of the Agreement in response to Glasser’s second e-mail.

19. Walker’s responses to Glasser’s confirmatory e-mails confirmed TWC’s belief that, consistent with the Agreement, Defendants were working on providing TWC with immediate written documentation of the Agreement. However, notwithstanding Defendants’ prior promise to provide TWC with a written licensing and distribution agreement, no such written documentation of the deal was ever provided by Defendants to TWC, on January 27, 2009 or thereafter.

20. At approximately 2:04 a.m. on January 28, 2009, Glasser e-mailed Sloss and Walker, noting once again that TWC “had accepted the terms and conditions of your offer.” Glasser noted that TWC had “been awaiting the written documentation of our deal and cannot understand why that documentation has been delayed.”

21. Following Defendants' definitive agreement with TWC, Defendants engaged in discussions with Lionsgate, a competitor of TWC, for North American licensing and distribution rights to *Push*.

22. On February 2, 2009, six days after reaching the Agreement with TWC, Defendants and Lionsgate announced that they had agreed to terms of a deal that provided Lionsgate with the North American distribution rights to *Push*. The subsequent agreement with Lionsgate conflicts with and violates the exclusive licensing and distribution rights to *Push* that was the subject of the Agreement.

FIRST CAUSE OF ACTION

(Fraud)

23. Plaintiff incorporates the allegations set forth in Paragraphs 1 through 22 above as though fully set forth herein.

24. Defendants intentionally and/or recklessly made false statements or omitted to state material facts with regard to their ability to contract with TWC for worldwide distribution and licensing rights to *Push*.

25. At the time Defendants made these false statements or omissions, they knew their statements were false and that TWC would rely on their statements.

26. TWC reasonably relied on Defendant's false statements and material omissions.

27. As a result of Defendants' false statements and material omissions TWC has been damaged.

SECOND CAUSE OF ACTION

(Breach of Contract)

28. Plaintiff incorporates the allegations set forth in Paragraphs 1 through 22 above as though fully set forth herein.

29. TWC and Defendants are parties to the Agreement, which required Defendants to provide TWC with a written licensing and distribution agreement containing the terms discussed by the parties on January 27, 2009.

30. In return, TWC promised to execute and return the written licensing and distribution agreement to Defendants.

31. TWC fully performed and was prepared to perform its obligations under the Agreement.

32. Defendants materially breached the Agreement with TWC by failing to provide TWC with the written licensing and distribution agreement, and by allowing Lionsgate to enter into a subsequent agreement that purportedly grants Lionsgate exclusive North American distribution rights to *Push*.

33. As a direct and proximate cause of Defendants' actions, Plaintiff has been damaged and continues to suffer damages.

THIRD CAUSE OF ACTION

(Negligence)

34. Plaintiff incorporates the allegations set forth in Paragraphs 1 through 22 above as though fully set forth herein.

35. On January 27, 2009, Defendants assumed the duty to draft and deliver documents to TWC that accurately described the Agreement.

36. Defendants did not deliver any documents to TWC, despite the existence of the Agreement.

37. As a direct and proximate cause of Defendants' breach of their duty, TWC was harmed.

38. It was reasonably foreseeable that Defendants' failure to deliver documents to TWC would cause TWC harm.

39. It was reasonably foreseeable that Defendants' breach of duty would cause harm to TWC.

DEMAND FOR RELIEF

WHEREFORE, TWC respectfully demands judgment from this Court in its favor against Defendants as follows:

(a) Awarding TWC compensatory and any and all other damages available by law in an amount to be determined at trial, with interest, at the maximum amount permitted by law;

(b) Awarding TWC its costs and disbursements in prosecuting this action to the extent permitted by law;

(c) Awarding TWC such other and further relief to which it may be entitled.

Dated: Armonk, NY
February 4, 2009

BOIES, SCHILLER & FLEXNER LLP

By:  _____

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