

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

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THE WEINSTEIN COMPANY, LLC,	:	Date Purchased:
	:	Plaintiff Designates New York
Plaintiff,	:	County as the place of trial.
	:	
vs.	:	
	:	
SMOKEWOOD ENTERTAINMENT GROUP,	:	SUMMONS
LLC,	:	
	:	
Defendants.	:	
-----	X	

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.

Dated: Armonk, NY
February 4, 2009

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP

By: 

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*Attorneys for Plaintiff The Weinstein
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TO:

Smokewood Entertainment Group, LLC
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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
SMOKEWOOD ENTERTAINMENT GROUP, LLC,	:	
	:	
Defendant.	:	
-----	X	

Plaintiff The Weinstein Company, LLC (“TWC”), for its Complaint against Defendant Smokewood Entertainment Group, LLC (“Smokewood”), alleges as follows:

NATURE OF THE ACTION

1. This case arises from Smokewood’s breach of contract with respect to TWC’s distribution rights relating to the critically acclaimed motion picture *Push: Based on the Novel by Sapphire* (“*Push*”). On information and belief, Smokewood is the financier and co-owner of *Push*.

2. On January 27, 2009, two days after *Push* won three awards at the Sundance Film Festival, TWC and Smokewood entered into a binding and enforceable agreement for licensing and distribution rights to the motion picture *Push* (the “Agreement”).

3. Smokewood materially breached the Agreement with TWC and never provided TWC with a written licensing and distribution agreement and instead contracted with Lions Gate Entertainment Corp. (“Lionsgate”), for the same and conflicting distribution rights to *Push* that Smokewood had previously agreed to give to TWC under the Agreement.

PARTIES

4. 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 and 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 limited liability company organized under the laws of Delaware with its principal place of business at 375 Greenwich Street, New York, New York, 10013.

5. Smokewood, a limited liability company organized under the laws of Colorado, transacts business in New York. At all times, Cinetic Media, Inc. (“Cinetic”), John Sloss (“Sloss”), and Bart Walker (“Walker”) acted as agents of Smokewood and were authorized to negotiate and enter into licensing and distribution agreements for *Push* on behalf of Smokewood.

JURISDICTION AND VENUE

6. The Court has personal jurisdiction over the Defendant pursuant to CPLR §§ 301 and 302. Smokewood regularly transacts or solicits business and/or derives substantial revenue from goods used or consumed or services rendered in New York and/or expect or should reasonably expect the acts complained of here to have consequences in this State.

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

FACTUAL ALLEGATIONS

I. BACKGROUND

8. *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.

9. *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."

10. At all times relevant to the Complaint, Cinetic, Sloss and Walker acted as Smokewood's agent and were authorized to negotiate licensing and distribution rights to *Push*. Both the Agreement with TWC and the subsequent agreement with Lionsgate were negotiated by Cinetic, Sloss and Walker.

II. THE AGREEMENT

11. On January 24, 2009, executives from TWC traveled to Park City, Utah to meet with Sloss and Walker. During these meetings, they discussed the possibility of TWC purchasing the distribution rights to *Push*.

12. TWC and Cinetic continued negotiations from January 24, 2009 until January 27, 2009.

13. On January 27, 2009, Cinetic offered TWC distribution rights to *Push* if TWC agreed to a series of specific terms and demands. The offer expressed by Cinetic was definite, certain, and manifested Smokewood's intent to form a binding contract to sell licensing and distribution rights to *Push*, subject only to TWC's acceptance of Smokewood's offer.

14. These terms included 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.

15. On January 27, 2009, TWC contacted Cinetic and unequivocally accepted Cinetic and Smokewood's offer. At that time, TWC agreed to all of the terms and demands that Cinetic included in their offer. Cinetic 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 Cinetic.

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 the Agreement on licensing and 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 would prepare the paperwork necessary to document the deal and immediately send it to TWC.

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 led TWC to believe that, consistent with the Agreement, Cinetic was working on providing TWC with immediate written documentation of the deal. However, notwithstanding Cinetic’s prior promise to provide TWC with a written distribution and licensing agreement, no written documentation of the Agreement was ever provided to TWC, on January 27, 2009 or thereafter.

20. At approximately 2:04 a.m. on January 28, 2009, Glasser e-mailed Walker and Sloss, 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. On January 28, 2009, TWC informed Lionsgate that TWC had finalized the Agreement with Smokewood.

22. Despite having reached the Agreement with TWC on January 27, 2009, on February 2, 2009, Smokewood, Lionsgate and Cinetic announced that they had agreed to terms of a deal that provided Lionsgate with the rights to distribute *Push*. Smokewood’s subsequent agreement with Lionsgate conflicts with and violates the licensing and distribution rights to *Push* that were the subject of the Agreement between TWC and Smokewood.

FIRST CAUSE OF ACTION

(Breach of Contract)

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

24. Plaintiff and Smokewood (by and through its agents Sloss, Walker and Cinetic) are parties to the Agreement granting Plaintiff licensing and distribution rights to *Push*.

25. Smokewood (by and through its agents Sloss, Walker and Cinetic) materially breached the Agreement with Plaintiff by failing to provide Plaintiff with the promised written licensing and distribution agreement and by entering into a subsequent agreement with Lionsgate that purportedly grants Lionsgate licensing and distribution rights to *Push*, in conflict with the licensing and distribution rights granted to Plaintiff under the Agreement.

26. Plaintiff fully performed and was prepared to perform its obligations under the Agreement.

27. As a direct and proximate cause of Smokewood's breaches, Plaintiff has been damaged.

DEMAND FOR RELIEF

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

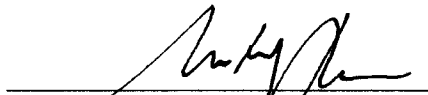
(a) Awarding Plaintiff compensatory and any and all other damages available by law in an amount to be determined at trial, with interest, at the maximum amount permitted by law;

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

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

Dated: Armonk, NY
February 4, 2009

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