

CAUSE NO. 07-13414

FILED

**BOYAR INVESTEMENTS, LLC,
AND ALTOVISE DAVIS**

Plaintiffs,

v.

**PERMUT PRESENTATIONS, INC,
AND DAVID PERMUT**

Defendants.

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IN THE DISTRICT COURT

D-95th

2007 NOV 14 10:00 AM
CLERK OF DISTRICT COURT
DALLAS COUNTY TEXAS
Asst. Clerk

DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE COURT:

COMES NOW Boyar Investments, LLC and Altovise Davis (collectively, "Plaintiffs") as Plaintiffs and states the following causes of action against Defendants Permut Presentations, Inc. and David Permut (collectively "Defendants").

I. PARTIES

1. Plaintiff Boyar Investments, LLC is a Texas limited liability company, with principle place of business in Dallas, Texas.

2. Plaintiff Altovise Davis is a resident of the state of California.

3. Defendant Permut Presentations, Inc. is a California corporation and may be served at 1871 Avenue of the Stars, Suite 505, Los Angeles, CA 90068.

4. Defendant David Permut is a resident of the state of California, and may be served at Permut Presentations, Inc. at 1871 Avenue of the Stars, Suite 505, Los Angeles, CA 90068.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this case because the amount in controversy exceeds the minimum jurisdictional requirements of this Court.

6. This Court has personal jurisdiction over the Defendants because Defendants engage in business in the State of Texas.

7. Venue for this case is proper in Dallas County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002 because the acts and omissions of that give rise to Plaintiff's cause of action occurred in Dallas County.

III. EXPEDITED DISCOVERY CONTROL PLAN

8. Given the imminence and immediacy of the harm that has been caused and will be caused by Defendants' misconduct, Plaintiffs request the entry of a Level 3 Discovery Control Plan providing for expedited discovery.

IV. BACKGROUND

9. Plaintiffs Boyar Investment LLC and Altovise Davis are owners of the copyright and other rights, title, and interest in the books "Yes I Can" and "Why Me?" These books are biographical treatments of the life of Sammy Davis, Jr., written by Sammy Davis, Jr., Burt Boyar and Jane Boyar. As owners of these rights and interests, Plaintiffs also own any motion picture rights which are required to produce any movie based on these books.

10. Defendant Permut Presentations, Inc. ("PPI") is a California film production company. Defendant David Permut, upon information and belief, is an officer, director, agent, and shareholder in Permut Presentations, Inc.

11. On February 22, 2002, Plaintiffs entered into an Option/Purchase Agreement with PPI (the "Option Agreement"). Under this Option Agreement, PPI agreed to pay an option fee of

\$2,500.00 in exchange for a nine month option to obtain certain film rights related to “Yes I Can” and “Why Me?” (the “Books”). If exercised in the option period, this option would vest PPI with the right to produce a film based upon the Books, and would grant Plaintiffs certain royalty payments in connection with the release of such a film. If exercised, the option also granted PPI the right and authority to use the Plaintiffs’ name, likeness, and biography in connection with Defendants’ efforts to produce and market the film.

12. Under the Option Agreement, the mechanism by which PPI would exercise the option (and thus be vested with all corresponding film rights) was the payment of a specific fee by Defendants to Plaintiffs (the “Picture Purchase Price”). Significantly, for the option to be exercised, the payment of the Picture Purchase Price must occur no later than the expiration of the nine month option period. The Option Agreement further provided that PPI could extend the initial nine month option period by an additional twelve months by payment to Defendants of an additional option fee of \$37,500.00.

13. On November 22, 2002, the initial nine month option period expired without PPI exercising the option by payment of the Picture Purchase Price. PPI also elected not to pay the additional option fee to extend the option period an additional twelve months. Accordingly, on that same date, any rights or options either PPI or Defendant David Permut may have had to produce or market a film based upon the Books was definitively extinguished.

14. Inexplicably, however, Defendants have continued to act as though they possess these rights. Indeed, notwithstanding the fact that Defendants unambiguously have no right or authority to do so, Defendants have continued to hold themselves out to third parties as possessing the film rights to the Books. They have continued to meet with potential writers,

actors, and distributors, falsely informing these persons that they represent the Plaintiffs and that they hold the rights to a production of a film based on the Books.

15. Defendants' unauthorized conduct has occurred despite the fact that Plaintiffs have informed them numerous times – and in no uncertain terms – that Defendants option period has expired, that Defendants have no film rights to the Books, and that Defendants are not authorized to speak with anyone on Plaintiffs' behalf. Indeed, in addition to numerous informal demands, Plaintiffs have sent Defendants at least three formal cease and desist letters, demanding that Defendants immediately cease and desist their unauthorized and unlawful conduct, including making further unfounded claims to any continuing right to participate in any film based on the Books. Defendants, however, have – inexplicably – ignored these requests and their conduct has continued to the present day, and they have continued to claim a right to participate in any film based on the Books.

16. Defendants' unauthorized conduct and improper claims have cast a substantial cloud over the Plaintiffs' otherwise clear title to film rights regarding the Books. Defendants' continued meetings with industry participants, in which Defendants willfully misrepresent that they speak on behalf of Plaintiffs and hold an interest in film rights to the Books, has created uncertainties surrounding ownership where no uncertainties do or should exist. For instance, Plaintiffs are aware of internet databases referenced and relied upon by film industry participants which inaccurately indicate that Defendants hold film rights to the Books (*see Exhibit A* attached hereto).

17. Defendants' conduct has thus substantially interfered with Plaintiffs' ability to lawfully exploit their rights to the Books. This substantial interference has cause irreparable harm to Plaintiffs.

18. Currently, Plaintiffs are in advanced negotiations with a major Hollywood studio for the production of a film based on the Books. This studio, however, is concerned about Defendants' specious claims, and has refused to consummate the deal and begin development of a motion picture based upon the Books until these claims are definitively resolved.

V. CLAIMS

Count One: Breach of Contract

19. The preceding paragraphs are incorporated herein as if set forth verbatim.

20. Defendants' continued unauthorized representations to third parties that Defendants hold certain rights to the production of a film based on the Books is a breach of the Option Agreement, which specifically provides that Defendants would have no such rights except upon exercise of the option – an event that has never occurred.

21. As a result of Defendants' breach of the Option Agreement, Plaintiffs have suffered and will continue to suffer irreparable harm and monetary damages which are not fully calculable, but are in excess of the minimal jurisdictional limits of the Court. Plaintiffs are therefore entitled to injunctive relief as described below and all damages proximately caused by Defendants, including without limitations all lost profits and opportunities and loss of good will and including pre- and post-judgment interest as allowable by law. Plaintiffs are also entitled to their attorneys' fees and costs.

Count Two: Declaratory Judgment

22. The preceding paragraphs are incorporated herein as if set forth verbatim.

23. A justiciable, and imminent controversy exists between Plaintiffs and Defendants as to the rights and status of the parties under the Option Agreement. The declaratory judgments requested herein will resolve the controversy between the parties.

24. Plaintiffs seek a declaratory judgment under Chapter 37 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, the Texas Declaratory Judgments Act, and request the Court to declare that (1) the option period under the Option Agreement has expired by operation of law without the option being exercised and (2) accordingly, Defendants have no rights under the Option Agreement or otherwise to any film based upon the Books nor do Defendants have any authority to negotiate or speak on Plaintiffs' behalf regarding such rights.

Count Three: Tortious Interference with Business Relations

25. The preceding paragraphs are incorporated herein as if set forth verbatim.

26. Plaintiffs have business relationships with companies and entities with which they are negotiating regarding the production of a film based on the Books.

27. Defendants' have, with improper motive and malice and without justification or excuse, intentionally interfered with these relationships.

28. As a direct result of Defendants' wrongful and intentional interference, Plaintiffs have suffered and will continue to suffer irreparable harm and monetary damages which are not fully calculable, but are in excess of the minimal jurisdictional limits of the Court. Plaintiffs are therefore entitled to injunctive relief as described below and all damages proximately caused by Defendants, including without limitations all lost profits and opportunities and loss of good will.

Count Four: Injunctive Relief

29. Defendants' persistent, repeated and willful misconduct has cast a substantial cloud over Plaintiffs' rightful title to its property and has caused Plaintiffs immediate and irreparable harm.

30. As long as Defendants' unauthorized misconduct continues, Plaintiffs cannot freely negotiate with potential film production partners nor can they utilize their property to its fullest extent.

31. Of most immediate concern is Plaintiffs' near-final film deal with a major motion picture studio, which the studio has refused to finally consummate until Plaintiffs rightful ownership in the film rights to the Books is definitively established.

32. Plaintiffs are likely to succeed on the merits.

33. Plaintiffs are entitled to preliminary and permanent injunctive relief (1) enjoining Defendants from making any further representations to any person or entity that Defendants possess any ownership interest in the Books, including any film rights to a movie based on the Books; (2) enjoining Defendants from representing to any person or entity that Defendants represent any of the Plaintiffs in any capacity or are otherwise authorized to speak on Plaintiffs' behalf; and (3) requiring Defendants to affirmatively contact all third parties who have published Defendants' misrepresentations concerning Defendants' ownership of any rights to the Books, including any website or other database or listing service, and inform such third party that this published information is false.

VI. EXEMPLARY DAMAGES

34. Due to Defendants' malicious conduct, Plaintiffs are entitled to exemplary and punitive damages in an amount to be determined at trial.

VII. JURY DEMAND

35. Plaintiffs demand a trial by jury.

VIII. CONDITIONS PRECEDENT

36. All conditions precedent to Plaintiffs' rights and claims herein have been performed or have occurred or have been waived.

IX. PRAYER

WHEREFORE, Plaintiffs pray and request:

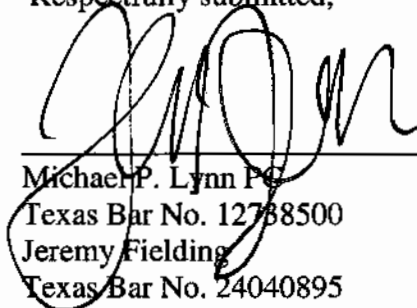
- a. Defendants be found in breach of its contract with Plaintiffs.
- b. The Court declare that (1) the option period under the Option Agreement has expired by operation of law without the option being exercised and (2) accordingly, Defendants have no rights to any film based upon the Books nor do they have any authority to negotiate or speak on Plaintiffs' behalf regarding such rights.
- c. Defendants be found to have interfered with Plaintiffs' business relationships and opportunities.
- d. The Court issue a temporary and permanent injunction that:
 - (1) Enjoins Defendants from making any further representations to any person or entity that Defendants possess any ownership interest in the Books, including any film rights to a movie based on the Books;
 - (2) Enjoins Defendants from representing to any person or entity that Defendants represent any of the Plaintiffs in any capacity or are otherwise authorized to speak on Plaintiffs' behalf;
 - (3) Requires Defendants to affirmatively contact all third parties who have published Defendants' misrepresentations concerning Defendants' ownership

of any rights to the Books, including any website or other database or listing service, and inform such third party that this published information is false.

- e. Plaintiffs be awarded reasonable attorneys' fees;
- f. For such other and further relief as the Court may deem just and equitable.

Date: November 14, 2007

Respectfully submitted,



Michael P. Lynn PC
Texas Bar No. 12788500

Jeremy Fielding
Texas Bar No. 24040895

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Cast

Eddie Griffin

Credit

Production Credits

Steve Longi
David Permut
Altovise Davis
Burt Boyar
Barrett Roda

Credit

Co-Producer
Producer
Executive Producer
Executive Producer
Executive Producer

Production Companies

David Permut Productions

Credit

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Writer

Jane Boyar
Burt Boyar
Sammy Davis Jr

Credit

Source Material
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Home Celebs David Permut

David Permut

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Born: New York, New York on 3/23/1954

When his peers were concerning themselves with grade-point-averages and whether they should work during the summer or back-pack through Europe, David A. Permut had quit college and was already working producing motion pictures. Starting with such projects as "Give 'Em Hell Harry" (1975) starring James Whitmore as Harry S. Truman and the "Richard Pryor -- Live in Concert" (1979), Permut has gone on to produce or executive producer more than 20 motion pictures and several TV projects as well, ranging from studio efforts such as the big screen version of "Dragnet" in 1987, to the edgy independent "Three of Hearts" (1993), in which a man and a woman are in love with the same woman....

Full Bio & Milestones

Filmography

- Adopt-a-Con - (Producer // Announced /)
- Allegiance - (Producer // Announced /)
- Blind Sided - (Producer // Announced /)
- Brother Sam - (Producer // Announced /)
- Dream Detective - (Producer // Announced /)
- F-Troop - (Executive Producer // Announced /)
- Fortune of Love - (Producer // Announced /)
- Friends Again - (Producer // Announced /)
- Goodbye Dali - (Producer // Announced /)
- Kings For a Day - (Producer // Announced /)
- Money to Burn (Site 85 Prods) - (Producer // Announced /)
- Prizonaz of War - (Producer // Announced /)
- Rewind - (Producer // Announced /)
- Route 52 - (Producer // Announced /)
- The Love Boat - (Producer // Announced /)
- The Zodiac - (Producer // Announced /)
- Thief of Light - (Producer // Announced /)
- Untitled (Bristol Bay/Desmond Doss Project) - (Producer // Announced /)
- Untitled (Johnny Law Fratno project) - (Producer // Announced /)
- White Out - (Producer // Announced /)
- Yes I Can - (Producer // Announced /)
- Youth In Revolt - (Producer // Announced /)
- Charlie Bartlett - (Producer / 2007 / Lensing/Awaiting Release /)
- Local Color - (Producer // Lensing/Awaiting Release /)
- Farce of the Penguins - (Producer / 2007 / Released /)
- DysFunKtional Family - (Producer / 2003 / Released /)
- Double Take - (Producer / 2001 / Released /)
- Face/Off - (Producer / 1997 / Released /)
- Kings for a Day - (Producer / 1997 / Released /)
- Eddie - (Producer / 1996 / Released / Village Roadshow Pictures Worldwide)
- Surviving the Game - (Producer / 1994 / Released /)
- Trapped in Paradise - (Executive Producer / 1994 / Released /)
- Money for Nothing - (Executive Producer / 1993 / Released /)
- The Temp - (Producer / 1993 / Released /)
- Three of Hearts - (Executive Producer / 1993 / Released / Meteor Film/The Movies)
- Captain Ron - (Producer / 1992 / Released /)
- Consenting Adults - (Producer / 1992 / Released /)
- 29th Street - (Producer / 1991 / Released /)
- The Marrying Man - (Producer / 1991 / Released / Jadran)

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independent "Three of Hearts" (1993), in which a man and a woman are in love with the same woman. Permut came to the attention of Hollywood powers in 1975 when he taped a performance of Whitmore in "Give 'Em Hell, Harry" for a production cost of \$320,000, transferred the result to film, released it nationwide, and grossed \$11 million. "Richard Pryor Live" grossed \$32 million domestically on an investment of less than \$1 million. Permut formed his own projection company in 1979, and signed his first studio deal in 1979 with Columbia, under the tutelage of Ray Stark, although it was not until 1982 that he saw his first feature film released -- "Fighting Back" by Paramount. "Dragnet" was his first box office success, although it was followed with the less successful "The Marrying Man," which writer Neil Simon disavowed. In 1992, Permut produced Alan J. Pakula's sputtering "Consenting Adults," about wife swapping and murder, and the abysmal Martin Short-Kurt Russell match-up, "Captain Ron". It was in 1993 that Permut moved away from studio fare to "Three of Hearts," although he was back with Paramount in 1993 for "The Temp," which has been described by critics as "Eve Harrington with a psychotic streak." After the equally forgettable "Trapped in Paradise" and "Surviving the Game" (both 1994).