

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
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DEC 19 2007

JAMES WHITTEN, Clerk
By: *[Signature]*
Deputy Clerk

TERRY SMITH,
and FIRST PRESS DIRECT
INC.,

Plaintiffs,

v.

STEVE HARVEY and
BIG CITY ENTERPRISES
INC.,

Defendants,

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Civil Action

No:

1:07-CV-3145

COMPLAINT FOR DECLARTORY AND INJUNCTIVE RELIEF

COMES NOW Terry Smith and First Press Direct, Inc.,
Plaintiffs, by and through their attorney complaining of
the Defendants, and respectfully alleging as follows:

I. SUBJECT MATTER JURISDICTION

1.

This is an action for declaratory relief and his
jurisdiction of the Court is invoked pursuant to 28 U.S.C.
Section, 1332, 2201 and Rule 51. F.R.C.P. for injunctive
relief.

2.

This action properly lies in the Northern District of Georgia, Atlanta Division, pursuant to 28 U.S.C. Section 1391 (b), because the Plaintiff resides in this judicial district and Defendants transacted business in this judicial district and the amount in _____ exceeds 75,000.

II. PARTIES

3.

Plaintiff, Terry Smith, ("Plaintiff" or "Ms. Smith"), is a resident of the State of Georgia. Ms. Smith is a writer and has published several books through her publishing company, First Press Direct Inc., ("Plaintiff" or "FPD").

4.

First Press Direct, Inc. is a Georgia Corporation and has published several books written by Terry Smith. One of the books published by Ms. Smith is entitled "Men Will Lie When the Truth Will Do", subtitled "The King, His Queen &

His Other Woman". This book is based on Ms. Smith's life during the time of her personal relationship with comedian Steve Harvey.

5.

Steve Harvey is a comedian, actor, and radio personality, who had a personal and intimate relationship with Ms. Smith between 1991 and 2000. Upon information and belief, Mr. Harvey is a resident of the state of Illinois and can be served through his attorney, Mr. Ricky Anderson, located at 7322 Southwest Freeway, Suite 2010, Houston, Texas 77074.

6.

Big City Enterprises, Inc. is a Texas corporation. Its principal place of business is in Houston, Texas. Big City Enterprises may be served through its registered agent of service, Wonder Love, Inc. Big City Enterprises, Inc. is subject to the jurisdiction of this Court, and venue properly lies within this Judicial District, by virtue of its doing substantial business and committing acts of, inter alia, entering into agreements with various entities and individuals within this Judicial District.

II. STATEMENT OF THE CASE

7.

On 1991, Ms. Smith met Mr. Harvey in Comedy Club. Immediately, thereafter, Mr. Harvey and Ms. Smith began having a personal relationship; Mr. Harvey flew Ms. Smith to cities where he was performing his comedy acts. Travel was often arranged through Mr. Harvey's assistant Ms. Megan at Mr. Harvey's instructions.

8.

The relationship between Ms. Smith and Mr. Harvey lasted for 9 years.

9.

In 2004, Ms. Smith wrote the book entitled "Men Will Lie When the Truth Will Do" in part based on her life and her personal relationship with Mr. Harvey.

10.

The Book was published by FPD and sold on Ms. Smith's website; www.TerrySmithOnline.com, and at national retail

bookstores, wholesale book stores and private sales. The book received national attention.

11.

Ms. Smith had no contact with Mr. Harvey between July, 2000 and September, 2004. Upon information and belief, it is believed that Mr. Harvey found out about the book. In October 2004, three weeks prior to the release of the book entitled "Men Will Lie When the Truth Will Do", Ms. Smith received a phone call from a family friend in Richmond, VA., informing her that Mr. Harvey has people looking for her. Ms. Smith contacts the gentleman in Richmond, VA. who told her Mr. Harvey wanted to speak with her and give her Mr. Harvey's number.

12.

Reluctantly, Ms. Smith called Mr. Harvey, who said he wanted to apologize for the way he treated her and asked for the opportunity to see her. In November, 2004, Ms. Smith met Mr. Harvey at Ritz Carlton Hotel in Atlanta, GA. during the film promotion of Mr. Harvey's movie Racing Stripes. Shortly thereafter, Mr. Harvey's attorney, Ricky Anderson, contacted Ms. Smith to try and purchase the rights of the book, which was a direct assault on Mr.

Harvey's client clean cut, good guy, and likeable Christian image.

13.

Upon information and belief, Big City Enterprises Inc., is the alter ego of Mr. Harvey. And this was established by Mr. Harvey's, attorney, Ricky Anderson, to protect Mr. Harvey's image and serve as buffer between Mr. Harvey and various third parties.

14.

In March 2005, Mr. Harvey contacted Ms. Smith by telephone to inform her that the radio and air personality Wendy Williams in New York mentioned Ms. Smith's book "Men Will Lie When the Truth Will Do" on air. Ms. Williams also announced that she was interested in having Ms. Smith come to New York to make a guest appearance to discuss the book "Men Will Lie When the Truth Will Do" on Ms. Williams show.

15.

April 2005, New York Post reporter of page six contacted Ms. Smith's manager Ms. McGown inquiring interest in doing a story on Ms. Smith's book, "Men Will Lie When the Truth Will Do" and Ms. Smith's relationship with Mr. Harvey. Upon information _____ reporter

contacted Mr. Harvey's Attorney Mr. Anderson with questions about the book "Men Will Lie When the Truth Will Do" and his client Mr. Harvey's relationship with Ms. Smith.

Attorney Anderson denied knowing or having knowledge of Ms. Smith, and any relationship Ms. Smith had with Mr. Harvey or the book "Men Will Lie When the Truth Will Do".

Attorney Anderson did in fact meet Ms. Smith and Ms. McGown in 1997 in a hotel suite along Mr. Harvey after the taping of Mr. Harvey's Live...Down South Somewhere, HBO Special.

Attorney Anderson, threatened Page Six with a lawsuit if they published the story.

16.

During the discussions about the purchase of the book, Ms. Anderson repeated Mr. Harvey's demand that the books be removed from every retail, wholesale, bookstores and Private site: www.TerrySmithOnline.com.

17.

In the agreement "Acknowledgement By Writer of Work-For-Hire Status", drafted by Mr. Anderson. The parties agreed, per their telephone discussions, that Ms. Smith would maintain the right to modify the material for a theatrical release and modified book release.

18.

The defendants also required Ms. Smith to execute a Buy and Sell Agreement selling the rights to the book, "Men Will Lie When the Truth Will Do", in exchange for one hundred and twenty thousand (\$120,000.00), in which the defendant has paid.

19.

On August 9, 2007, Ms. Smith submitted to defendants a synopsis of The Rights to Her Life for their review. Defendant's failed and refused to respond to Ms. Smith's synopsis. Ms. Smith is desirous of pursuing the theatrical production of the story about her life with Mr. Harvey.

20.

Ms. Smith is in the process of modifying the story for the theatrical release. Defendants have indicated that they will try and prevent such a release based on the language of the agreement. The Acknowledgment by Writer of Work-for-Hire Status is vague and ambiguous in that it takes away certain rights that it purportedly gives to Ms. Smith.

21.

At the time that the parties discussed these agreements, Ms. Smith did not have an attorney review the documents submitted by the defendants.

22.

Defendants through their attorney have on numerous occasions, conspired to defraud individuals like Ms. Smith of their property rights in bad faith, and in order to protect the personal interest of Mr. Harvey.

23.

By virtue of the facts set forth herein, in an actual controversy exists between plaintiffs and defendants herein.

COUNT I

**THE AGREEMENTS ARE
VOID OR UNENFORCEABLE**

24.

Defendants acknowledgment by writer of work-for-hire status purports to be a work for hire agreement whereby Plaintiffs book entitled "Men Will Lie When The Truth Will Do" was prepared within the scope of her employment.

25.

Plaintiffs book was not a "work made for hire" as that term is defined in 17 U.S.C. 101 and therefore Plaintiffs retain the copyright to the book.

26.

The acknowledgement by writer of work-for-hire status purports to also take away certain of the plaintiffs intellectual property rights while at the same time allowing her to retain the right to "modify the material for a Theatrical Release.

27.

This ambiguity should be construed against the defendants who drafted the agreement.

28.

The Buy and Sell Agreement also purports to convey the Plaintiffs copyrights to the book "Men Will Lie When The Truth Will Do" to Defendants.

29.

The agreements are void and/or unenforceable in that they both violate the provisions of the United States Copyright Act.

COUNT II
FRAUD

30.

Prior to entering into this transaction, Defendants were aware that Plaintiff wanted to maintain the rights to a theatrical release of the book.

31.

Defendants knew that the Defendants were not represented by an attorney quickly faxed these agreements to the Plaintiff's.

32.

Defendants represented to the Plaintiffs that they would be able to retain the rights to modify the book for theatrical release. When they made this representation they knew that the Plaintiffs would rely on the representation in entering into the agreement.

33.

Defendant's representation was false in that they included language in the agreement that purports to keep the Plaintiffs from releasing any modified version of the book.

Defendants action constitutes fraud.

WHEREFORE, Plaintiffs pray that the Court;

A. Declare that Acknowledgement By Writer of Work-For-Hire Status purporting to convey Plaintiff's copyright is null and/or void and/or unenforceable pursuant to.

B. Declare that Buy and Sell Agreement is generally null and/or void and/or unenforceable because it operates for all practical purposes to deprive the Plaintiffs of their federally protect rights by the United States Copyright Act.

C. Permanently enjoin Defendants from using these types of agreement in contravention of the copyright laws to protecting Mr. Harvey.

D. Permanently enjoin Defendants from attempting in the future to enforce its current agreement against these plaintiffs and others similarly situated;

E. Award the Plaintiffs their reasonable attorney fees and costs associated with this action.

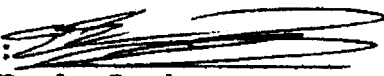
F. Afford such other relief as the Court may deem reasonable and proper;

G. Afford such other relief as the Court may deem reasonable and proper;

This 14 day of December, 2007

Respectfully submitted,

THE BURKE LAW GROUP, LLC

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