

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 34

BC683422

November 30, 2018

WYNDHAM LEWIS VS 20TH CENTURY FOX TELEVISION

8:30 AM

INC ET AL

Judge: Honorable Michael P. Linfield

CSR: Josslyn Gordon, CSR# 10284

Judicial Assistant: Reyna Navarro

ERM: None

Courtroom Assistant: V. Galindo

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Steven T. Lowe

For Defendant(s): Christopher Lindsay for Richard L. Stone

Other Appearance Notes: Peter Harrington for Plaintiff (X)David R. Singer for Defendant (X)

NATURE OF PROCEEDINGS: Hearing on Motion for Summary Judgment

The Court's tentative ruling is provided to all sides via the Court's website.

The matter is called for hearing.

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Josslyn Gordon, CSR# 10284, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court's tentative ruling is adopted as the Order of the Court as follows:

Case Number: BC683422 Hearing Date: November 30, 2018 Dept: 34

SUBJECT: Renewed Motion for Summary Judgment

Moving Party: Defendants Fox Broadcasting Company, Twentieth Century Fox Television, 3 Arts Entertainment, Inc., Oly Obst, John Chernin, and Dave Chernin

Resp. Party: Plaintiff Wyndham Lewis

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Defendants' motion for summary judgment is DENIED as to Defendants Fox and Fox TV and GRANTED as to Defendants 3 Arts, Obst, John Chernin and Dave Chernin.

Plaintiff's objections to Defendants' evidence are OVERRULED.

Defendants' objections to Plaintiff's evidence are OVERRULED.

BACKGROUND:

Plaintiff Wyndham Lewis ("Plaintiff") commenced this action on November 14, 2017, and brought the operative First Amended Complaint on August 23, 2018, alleging that Defendants Fox Broadcasting Company ("Fox"), Twentieth Century Fox Television ("Fox TV"), 3 Arts Entertainment, Inc. ("3 Arts"), Oly Obst ("Obst"), John Chernin ("John"), and Dave Chernin ("Dave") (collectively "Defendants") voluntarily accepted the disclosure of Plaintiff's Teleplay The Godmother knowing that they had an obligation to compensate and credit Plaintiff in accordance with custom and practice in the entertainment industry in the event Plaintiff's ideas were later used. Defendants later used Plaintiff's ideas for the creation of The Mick and did not compensate or credit Plaintiff.

Plaintiff brought a sole cause of action for Breach of Implied-In-Fact Agreement.

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Defendants now move for summary judgment against Plaintiff.

ANALYSIS:

First Cause of Action – Breach of Implied-In-Fact Agreement

Defendants argue that this cause of action fails because (1) Plaintiff cannot demonstrate that an implied-in-fact contract exists between himself and any Defendant, and (2) Plaintiff cannot demonstrate breach of any alleged implied-in-fact contract because the evidence proves the ideas for the television series *The Mick* were independent created by John and David.

(1) Existence of Contract

For an implied-in-fact contract in an idea submission case, plaintiff must show (1) he clearly conditioned the submission of their ideas on an obligation to pay for any use of their ideas; (2) the defendants, knowing this condition before the plaintiff disclosed the ideas, voluntarily accepted the submission of the ideas; and (3) the defendants found the ideas valuable and actually used them, i.e., the defendants based their work substantially on the plaintiffs' ideas, rather than on their own ideas or ideas from other sources. (*Spinner v. American Broadcasting Companies, Inc.* (2013) 215 Cal.App.4th 172, 184; *Mann v. Columbia Pictures, Inc.* (1982) 128 Cal.App.3d 628, 646–647, fn. 6.) Further, the implied promise, if it is to be found, must be based on circumstances which were known to the defendant at and/or preceding the time the ideas were allegedly disclosed to it. (*Mann, supra*, 128 Cal.App.3d at 646.)

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a. Defendants Fox and Fox TV

Defendants argue that Plaintiff cannot establish that the work was disclosed for sale or that the circumstances attending disclosure condition the submission of his ideas on an obligation to pay for their use. Regarding the 2012 general meetings with Fox and Fox TV executives where Plaintiff submitted his idea for The Godmother, Defendants present evidence that Plaintiff never stated that he expected compensation for the use of his idea, no one promised to compensate him for the use of his idea, Plaintiff did not mention his idea in any later correspondence, and no one at Fox followed up with him about the idea. (Lindsay Decl., Exh. N, Lewis Depo., at 339-344, 375-377.) Accordingly, Defendants argue that the submission was not made on a clear condition that there is an obligation to pay for the use of the idea.

Regarding the 2014 and 2015 submissions by Plaintiff's CAA representative Elizabeth Newman ("Newman"), Defendants present evidence that the submissions were writing samples as part of Plaintiff's applications to be hired as a staff writer on television shows Fox and Fox TV were developing. The evidence shows that in 2014, Newman emailed an executive at Fox attempting to have Plaintiff hired as a "lower level" staff writer on the television program Dead Boss and attached The Godmother. (Narra Decl., ¶ 7, Lindsay Decl., Exh. E, Exh. C, Newman Depo., at 65-59.) Newman testified that her purpose in sending The Godmother was to get Plaintiff hired on the potential series. (Newman Depo., at 59:6-10.) The evidence also shows that in 2015 a similar situation occurred with Fox TV. (Cassidy Decl., ¶¶ 10-11, 13, Exhs. A-B; Lindsay Decl., Exh. C, Newman Depo., at 66:6-11, 204-205.) Therefore, the 2014 and 2015 submissions were not provided with the intention to have The Godmother produced or aired. Accordingly, an implied contract could not have been formed in these instances because the submissions were not conditioned on an obligation to pay for the use of the idea.

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The Court finds that Defendants have not met their initial burden to show that the submission was not conditioned on the obligation to compensate for the use of the idea. Specifically, regarding the 2012 meetings, Defendants only provide evidence that there was never an express statement or promise regarding compensation. However, the condition can be found by circumstances surrounding the submission.

Further, Plaintiff cites to authority that industry custom for a “solicited” submission can imply a contract. (*Minnear v. Tors* (1968) 266 Cal.App.2d 495, 500; *Gunther-Wahl Productions, Inc. v. Mattel, Inc.* (2002) 104 Cal.App.4th 27, 43.) Plaintiff provides evidence that it is well understood by Defendants and others in the entertainment industry that if any network or studio is interested in using the ideas and/or script, especially when submitted through a reputable agent, they take on the obligation to compensate the author or creator for the ideas if used. (SUF 93-94.) Plaintiff also provides evidence that the submissions to Fox and Fox TV both orally and in writing were “solicited” and Defendants do not actually dispute that the submissions that come through an agent are referred to as “solicited.” (SUF Nos. 90-93.)

Accordingly, there is a triable issue of material fact as to whether the submissions clearly implied the condition to pay for the use of the idea through the circumstances such as it being a “solicited” submission and industry practices as to Defendants Fox and Fox TV.

b. Defendants 3 Arts, Obst, John Chernin and Dave Chernin

Defendants argue that 3 Arts, Obst, John and Dave cannot be held liable; according to Defendants, an implied contract was never formed because Plaintiff did not submit his teleplay to them. In opposition, Plaintiff argues that Newman sent 3 Arts the teleplay and provides evidence of an email chain between Newman and Jonas Brooks requesting Brooks to submit *The Godmother* to 3 Arts. (Lowe Decl., Exh. I.) However, as Defendants point out, there is no

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evidence that Brooks ever sent *The Godmother* to 3 Arts. Further, there is testimony from Obst that he did not receive the teleplay. (Obst Decl., ¶ 4.) Plaintiff argues that it is not plausible that Obst could remember receiving the teleplay, but the Court finds this argument without merit. Plaintiff also argues that John and Dave Chernin have read Plaintiff's teleplay, but only cites to evidence showing similarities between *The Mick* and *The Godmother*. (SUF Nos. 77, 84-89, 105.) This is not sufficient evidence to show that Plaintiff submitted his teleplay to John and Dave.

The Court finds that there is no evidence that a contract was formed between Plaintiff and 3 Arts, Obst, John, or Dave. Therefore, summary judgment is GRANTED as to Defendants 3 Arts, Obst, John Chernin and Dave Chernin.

(2) Breach of Contract

Defendants argue that the undisputed facts establish that *The Mick* was independently created.

Evidence that a Defendant's work was created independently of the Plaintiff's idea negates the element of actual use. (See *Spinner*, supra, 215 Cal.App.4th at 191-192.) The evidence must be clear, positive, and uncontradicted. (*Hollywood Screentest of America, Inc. v. NBC Universal, Inc.* (2007) 151 Cal.App.4th 631, 646-647; *Teich v. General Mills, Inc.* (1959) 170 Cal.App.2d 791, 799.)

Defendants present evidence by way of sworn declarations and documentary evidence regarding the creation of the project in December 2012, February 2013, April 2013, May 2015, June 2015, July 2015, and August 2015.

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The Court finds the evidence provided is not “clear, positive, and uncontradicted” so as to establish, on summary judgment, that it was independently created. (Cf., *Hollywood Screentest of America, Inc. v. NBC Universal, Inc.* (2007) 151 Cal.App.4th 631, 648.) The evidence establishes that as early as 2012, there was an idea to make a television show about a wealthy couple that must leave their family, so a sibling of the couple must move and take care of their three children. (Charnin Decl., Exh. A.) However, there are many differences such as the parents dying, the brother being the sibling, and the issue of the trust fund money. Further, as admitted by both parties, the concept is not novel. Defendants also admit that some of the Fox TV executives participated in the development of *The Mick*. (UMF Nos. 67-69.) Lastly, the Court notes that the typo regarding the name “Grant” for the father could be found by a reasonable jury to be evidence of the use of *The Godmother* as a source for *The Mick*, since “Grant” was the name for the father in *The Godmother*. While Defendants provide a plausible explanation that this was a mere typo, a jury could find that this evidence contradicts the argument that *The Mick* was independently created.

The Court finds that there are triable issues of material fact as to whether an implied contract was created and whether there was a breach of that implied contract. Summary judgment is DENIED.

CONCLUSION

For the reasons stated above, Defendants’ motion for summary judgment is DENIED as to Defendants Fox and Fox TV and GRANTED as to Defendants 3 Arts, Obst, John Chernin, and

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Dave Chernin.

Plaintiff is to give notice.