

Joston Theney, Plaintiff,

v.

Christopher Otiko, Defendant,

Coast to Coast Podiatry, Inc. dba as Blood Red Films, Defendant,

ImageWorks Entertainment International Inc, Defendant.

Case No. 2:17-cv-04517-CBM-AFM.

United States District Court, C.D. California.

December 10, 2018.

Joston R Theney, Plaintiff, represented by Francis J. Flynn, Jr., Law Office of Francis J Flynn Jr.

Dr. Christopher A. Otiko & Coast to Coast Podiatry, Inc., doing business as Blood Red Films, Defendants, represented by Charles Stephen Love, Law Offices of Stephen Love.

Dr. Christopher A. Otiko, Counter Claimant, represented by Charles Stephen Love, Law Offices of Stephen Love.

Joston R Theney, Counter Defendant, represented by Francis J. Flynn, Jr., Law Office of Francis J Flynn Jr.

STIPULATED CONSENT JUDGMENT

CONSUELO B. MARSHALL, District Judge.

Pursuant to this Court's Order to attend mediation, the remaining Parties in this suit, Plaintiff Joston Theney and Defendants Christopher Otiko and Coast to Coast Podiatry, Inc. (d/b/a Blood Red Films), along with their respective counsel, attended mediation on June 18, 2018. The Parties reached a settlement, a part of which requires entry of a Stipulated Consent Judgment. The Parties have separately moved this Court for entry of this Proposed Stipulated Consent Judgment "Ex. 1". WHEREFORE IT IS HEREBY STIPULATED AND ORDERED for all matters relevant to this case between the Parties as follows:

1. This Court has jurisdiction over the Parties and venue is proper.

2. Plaintiff Joston R. Theney and Defendant Christopher Otiko and Defendant Coast to Coast Podiatry, Inc. d/b/a Blood Red Films expressly consent to the entry of this Consent Judgment.

3. The Parties stipulate as a factual finding that as between Plaintiff Joston R. Theney and remaining Defendants Christopher Otiko and Coast to Coast Podiatry, Inc. d/b/a Blood Red Films, Plaintiff Joston R. Theney is the sole owner of all copyrights, including copyrights to scripts, screenplays and motion pictures for Axeman II: Overkill and Axeman at Cutter's Creek.

4. Pursuant to this stipulated factual finding, the Court finds that the Federal Registration Pau X-XXX-XXX filed on February 4, 2016 by Defendant Christopher Otiko and subsequently issued to Defendant Otiko is invalid, null and void.

5. Unless there is a default in the Settlement Agreement which remains uncured for 30 day after notice as provided in the Settlement Agreement, the Parties agree that neither Plaintiff nor Defendants admit liability or fault in their settlement and they enter into this Stipulated Consent Judgment as a compromise of this dispute.

6. The Parties have agreed to settle this case for the sum of \$44,494 to be paid over time. In the event that there is a default of payment in the Settlement Agreement which remains uncured for 30 days after notice as provided in the Settlement Agreement, Plaintiff may move for entry of the Stipulated Consent Judgment attached hereto as "Ex. 2" in any court of competent jurisdiction. Should Ex. 2 be entered in any court of competent jurisdiction due to a default in payment by the Defendant(s), then the terms of Ex. 2 shall control.

7. The Parties agree that Defendants Christopher Otiko and Coast to Coast Podiatry, Inc. d/b/a Blood Red Films is hereby PERMANENTLY ENJOINED from directly, contributorily or indirectly infringing Plaintiff's rights in the scripts, screenplays and/or motion pictures, including without limitation by using the internet to reproduce or copy any Axeman motion pictures, to distribute any Axeman branded motion pictures, or to make Axeman branded motion pictures available for distribution to the public.

8. Defendants agree and are hereby directed to immediately return to Plaintiff all Axeman content in their possession, custody or control.

9. The Court maintains jurisdiction over this action and the Parties to the extent necessary to enforce this Consent Judgment and their Settlement Agreement.

10. The Parties expressly consent to have a United States Magistrate Judge conduct any and all proceedings in this case to enforce this Consent Judgment.

11. Each Party shall bear their own attorneys' fees and costs.

12. Pursuant to the Settlement Agreement, this case is dismissed with prejudice.

SO ORDERED.

STIPULATED CONSENT JUDGMENT "EX. 2"

Pursuant to this Court's Order to attend mediation, the remaining Parties in this suit, Plaintiff Joston Theney and Defendants Christopher Otiko and Coast to Coast Podiatry, Inc. (d/b/a Blood Red Films), along with their respective counsel, attended mediation on June 18, 2018. The Parties reached a settlement, a part of which requires entry of a Stipulated Consent Judgment. The Parties have separately moved this Court for entry of this Proposed Stipulated Consent Judgment "Ex. 1". WHEREFORE IT IS HEREBY STIPULATED AND ORDERED for all matters relevant to this case between the Parties as follows:

1. This Court has jurisdiction over the Parties and venue is proper.
2. Plaintiff Joston R. Theney and Defendant Christopher Otiko and Defendant Coast to Coast Podiatry, Inc. d/b/a Blood Red Films expressly consent to the entry of this Consent Judgment.
3. The Parties stipulate as a factual finding that as between Plaintiff Joston R. Theney and remaining Defendants Christopher Otiko and Coast to Coast Podiatry, Inc. d/b/a Blood Red Films, Plaintiff Joston R. Theney is the sole owner of all copyrights, including copyrights to scripts, screenplays and motion pictures for Axeman II: Overkill and Axeman at Cutter's Creek.
4. Pursuant to this stipulated factual finding, the Court finds that the Federal Registration Pau X-XXX-XXX filed on February 4, 2016 by Defendant Christopher Otiko and subsequently issued to Defendant Otiko is invalid, null and void.
5. The Parties agree and the Court finds that Plaintiff Joston R. Theney has valid and enforceable Federal Registrations to the copyrights in the script and screenplay (TXu X-XXX-XXX) and the motion picture (PAu X-XXX-XXX) Axeman II: Overkill.
6. The Parties agree and the Court finds that Defendants Otiko and Coast to Coast Podiatry, Inc. infringed Plaintiff's rights to Axeman II: Overkill by creating a derivative work of the motion picture Axeman II: Overkill.
7. The Parties agree and the Court finds that Defendant Otiko infringed Plaintiff's rights to Axeman II: Overkill by copying — without license or approval of Plaintiff — Axeman II: Overkill and submitted a copy of this motion picture to the United States Copyright Office on February 4, 2016 as a deposit to a copyright registration application wherein Defendant Otiko claimed that he was an author of the motion picture, script and screenplay to Axeman II: Overkill.
8. The Parties agree and the Court finds that a week prior to the submission of the application for copyright registration by Defendant Otiko, on January 28, 2016, Defendant Otiko entered into a contract with Plaintiff Theney wherein Defendant Otiko agreed that Theney owned all copyrights to Axeman II: Overkill.

9. The Parties agree and the Court finds that the submission of a copy of the motion picture Axeman II: Overkill to the copyright office on February 4, 2016 was an act of willful infringement in violation of Plaintiffs' rights.

10. The Parties have agreed to settle this case for the sum of \$44,494 to be paid over time, but Defendants have breached that agreement.

11. The Parties agree and the Court finds that any amounts that remain unpaid from the settlement sum of \$44,494.00 after crediting all payments heretofore made by Defendants or either of them are reduced to judgment in the amount of \$ _____.

12. The Parties agree and the Court finds that Defendants were willful infringers.

13. The Parties agree that Defendants Christopher Otiko and Coast to Coast Podiatry, Inc. d/b/a Blood Red Films is hereby PERMANENTLY ENJOINED from directly, contributorily or indirectly infringing Plaintiff's rights in the scripts, screenplays and/or motion pictures, including without limitation by using the internet to reproduce or copy any Axeman motion pictures, to distribute any Axeman branded motion pictures, or to make Axeman branded motion pictures available for distribution to the public.

14. Defendants agree and are hereby directed to immediately return to Plaintiff all Axeman content in their possession, custody or control.

15. The Court maintains jurisdiction over this action and the Parties to the extent necessary to enforce this Consent Judgment and their Settlement Agreement.

16. The Parties expressly consent to have a United States Magistrate Judge conduct any and all proceedings in this case to enforce this Consent Judgment.

17. Defendant shall pay Plaintiffs' reasonable costs and fees associated with enforcing their Settlement Agreement and entering this Proposed Consent Judgment.

IT IS SO ORDERED.