

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
3/23/16
JEFFREY P. COLWELL, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00518-NYW

FIROOZEH DUMAS, an individual,

Plaintiff,

v.

WARNER LITERARY GROUP, LLC,
a Colorado limited liability company,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, Firoozeh Dumas (“Ms. Dumas” or “Plaintiff”), by and through her attorney, David W. Feeder II of Feldmann Nagel, LLC, hereby submits her Complaint against Defendant Warner Literary Group, LLC (“WLG” or “Defendant”), and in support thereof, states and alleges as follows:

I. INTRODUCTION

1. This action arises generally out of the business dealings between Ms. Dumas and the Defendant, specifically Defendant’s actions and inactions as Ms. Dumas’ literary agent. Ms. Dumas seeks recovery of damages she has suffered as a result of Defendant’s breaches of contract, breaches of fiduciary duties, fraudulent misrepresentations/inducement, and interference with Ms. Dumas’ prospective business advantage. Ms. Dumas also seeks declaratory relief regarding the status of the Parties’ agency relationship and the enforceability of the Parties’ agreement.

II. PARTIES

1. Plaintiff Firoozeh Dumas is an individual currently residing at [REDACTED]. Ms. Dumas is a U.S. citizen who resides in Germany, and she is an author who has been writing novels since 2001, and publishing since 2003.

2. Upon information and belief, Defendant Warner Literary Group, LLC is a limited liability company organized under the laws of the state of Colorado, with its principal offices located at 3223 Iron Forge Place #102, Boulder, Colorado 80301.

3. Upon information and belief, WLG's business includes providing literary agent services, which is carried out primarily by WLG's principal, Sarah Warner ("Ms. Warner"). Ms. Dumas engaged WLG to act as her agent for the purposes of publicizing, marketing and attempting to sell publishing and licensing rights to a novel she has written.

III. JURISDICTION

4. This Court has subject matter jurisdiction to adjudicate this case pursuant to 28 U.S.C. § 1332(a), because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy for this action exceeds Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

8. This Court has personal jurisdiction over Defendant WLG, as WLG is a Colorado limited liability company that has its principal offices in Colorado and conducts business (including a substantial part of the events and omissions at issue in this action) in Colorado.

IV. VENUE

9. This action is properly brought in this Court pursuant to 28 U.S.C. § 1391(a), as Defendant WLG's principal offices are in the state of Colorado, and a substantial part of the events or omissions giving rise to this action occurred in the state of Colorado.

V. GENERAL ALLEGATIONS

10. Ms. Dumas began writing in 2001, and published her first collection of stories, *Funny in Farsi*, in 2003. *Funny in Farsi* enjoyed success, and was listed on the New York Times, San Francisco Chronicle and L.A. Times bestseller lists. Ms. Dumas' second published work, *Laughing Without an Accent*, was published in May 2008 and became a national bestseller in 2015.

11. On or around June 12, 2014, Ms. Dumas entered into an Agency Representation Agreement ("Agency Agreement") with WLG, whereby WLG agreed to act as Ms. Dumas' literary agent for the purposes of marketing and negotiating publishing and/or licensing agreements for a new project, a novel which was ultimately titled *It Ain't So Awful, Falafel* ("*Falafel*" or the "Novel"). *Falafel* will be published in May 2016 by Houghton Mifflin Harcourt ("HMH").

12. WLG, via Ms. Warner, represented that Ms. Warner had the skills and experience necessary to act as Ms. Dumas' agent and perform the agreed services. Ms. Dumas reasonably relied on these representations when deciding to enter into the Agency Agreement with WLG.

13. While WLG did perform certain services and assist with negotiating the publishing agreement between Ms. Dumas and HMH for *Falafel*, WLG has breached the Agency Agreement with Ms. Dumas. Specifically, the Agency Agreement required WLG to provide

services “in a manner reasonably consistent with the generally accepted standards of care, quality, and diligence generally applicable to the nature of [WLG’s] professional services within the field.” WLG failed to satisfy these standards and its professional obligations in multiple respects.

14. For example, in or around September 2015, WLG negotiated a contract for audio rights for *Falafel* with Audible.com after Ms. Warner assured Ms. Dumas that Ms. Dumas still owned those audio rights (“I thought we had included [the *Falafel* audio rights] in the [HMH] contract, but we didn’t! I’m so glad!”). However, WLG’s assurance and advice to Ms. Dumas was entirely wrong. In October 2015 Ms. Dumas’ publisher, HMH, informed WLG that it in fact owned the *Falafel* audio rights. As a result, the contract with Audible.com had to be cancelled.

15. In addition, in or around November 2015, WLG attempted to assist and advise Ms. Dumas on the renewal of her audio rights contract with Audible.com for her novel *Funny In Farsi*. Notably, WLG did not initially represent Ms. Dumas for *Funny In Farsi*, and Ms. Dumas negotiated the initial contract with Audible.com on her own. WLG raised the renewal with Ms. Dumas in an effort to assert itself as the agent of record for the renewed *Funny In Farsi* Audible.com contract. When Ms. Warner approached Ms. Dumas about this renewal, Ms. Dumas asked her whether it was for the same terms as the initial contract, which Ms. Dumas did not have access to at the time. WLG’s/Ms. Warner’s “diligence” on this issue apparently involved simply asking Audible.com (“Are these the same terms from [Ms. Dumas’] previous [*Funny In Farsi*] contract?”), and blindly accepting Audible.com’s answer without reviewing the original contract. In fact, there were two (2) differences in compensation in the *Funny In Farsi*

Audible.com renewal, and WLG failed to inform Ms. Dumas of these substantive differences despite her direct question on this issue.

16. As a result of these and other unacceptable and unprofessional actions by WLG and Ms. Warner, the working relationship between Ms. Dumas and WLG became strained and was no longer acceptable to Ms. Dumas. Accordingly, on or around December 10, 2015, Ms. Dumas informed Ms. Warner that she revoked WLG's/Ms. Warner's authority to act on her behalf as an agent and terminated her agency relationship with WLG, as is her right under Colorado law.

17. On or around January 21, 2016 – over six (6) weeks after Ms. Dumas revoked/terminated WLG's representation and authority – Ms. Warner informed Ms. Dumas that WLG had previously tried to sell the foreign rights for *Falafel*. Less than a week later, on January 26, 2016, Ms. Warner urged Ms. Dumas to “reconsider and rethink” her decision to revoke/terminate WLG's agency, and recommended to Ms. Dumas that she engage a subagent (Taryn Fagerness) to sell foreign rights for *Falafel*. Again, WLG's/Ms. Warner's knowledge of, action on, and advice regarding key contractual rights was erroneous, and Ms. Dumas herself subsequently determined and informed Ms. Warner that HMH owns the foreign rights for *Falafel*. Ms. Warner's flippant email response to Ms. Dumas confirmed and is emblematic of her/WLG's sub-standard services as Ms. Dumas' literary agent: “You're right about HMH having foreign rights. Glad that's resolved. Do either of us pay attention to the contracts?!” Ms. Dumas entered into the Agency Agreement with WLG and hired WLG as her literary agent based on the understanding and representations that WLG/Ms. Warner in fact understood and were paying attention to the contracts they negotiated on her behalf.

18. Notably, on or around February 3, 2016, Ms. Warner represented that WLG had not in fact tried to sell the foreign rights for *Falafel*, contrary to her previous representations to Ms. Dumas.

19. Ms. Dumas has lost trust in WLG and Ms. Warner, and Ms. Dumas has no confidence in WLG's ability to correctly advise her with regard to her rights under any existing or future contracts. Ms. Dumas is also concerned that WLG's actions – selling and attempting to sell rights that Ms. Dumas does not own – has not only damaged her, but also created potential liability for her, in addition to damage to her reputation in the industry and with a publisher (Audible.com) with whom she has had a long-term and positive relationship.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **(Breach of Contract)**

20. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 19 of this Complaint as if fully set forth herein.

21. On or about June 12, 2014, Ms. Dumas and WLG entered into the Agency Agreement, which was a valid, binding and legally enforceable contract supported by adequate consideration.

22. WLG breached the Agency Agreement by failing to provide services “in a manner reasonably consistent with the generally accepted standards of care, quality, and diligence generally applicable to the nature of Agent’s professional services within the field.” WLG’s breaches include failing to understand or determine Ms. Dumas’ rights and accurately advise her on them, and related actions and inactions.

23. At all relevant times, Ms. Dumas fully performed her obligations under the Agency Agreement.

24. WLG's breaches of the Agency Agreement caused damages to Ms. Dumas, including damage to her reputation in the publishing industry, inability to effectively publicize, market and sell the remaining rights to the Novel, and lost opportunities, revenue and/or profits for the Novel.

25. Because WLG materially breached the Agency Agreement, it is no longer entitled to enforce the Agency Agreement, and is therefore entitled to no further compensation under the Agency Agreement.

Wherefore, Plaintiff respectfully requests that judgment be entered against Defendant for compensatory and consequential damages in an amount to be proven at trial, along with post-judgment interest, costs, and such other and further relief as the Court deems just and proper.

SECOND CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

26. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Pursuant to the Agency Agreement, Ms. Dumas granted WLG the authority to act as her agent to a) represent her in the negotiation of publishing, licensing and/or distribution agreements for the Novel, and b) otherwise publicize the Novel.

28. As Ms. Dumas' agent, WLG agreed to act in the best interest of Ms. Dumas and the Novel.

29. As Ms. Dumas' agent, WLG was acting as a fiduciary of Ms. Dumas with respect to representing her in the negotiation of publishing, licensing and/or distribution agreements for the Novel, and publicizing the Novel.

30. WLG breached its fiduciary duties to Ms. Dumas in numerous respects, including the following: failing to timely provide necessary information concerning its actions or dealings on Ms. Dumas' behalf; failing to fully and/or honestly inform Ms. Dumas regarding its actions taken on her behalf; agreeing to sell rights that Ms. Dumas did not own; failing to conduct necessary research and analysis for business requirements; failing to properly advise Ms. Dumas regarding her rights and proposed transaction terms; failing to respect and abide by Ms. Dumas' termination/revocation of WLG's agency authority.

31. WLG's breaches of its fiduciary duties directly and proximately caused substantial damages to Ms. Dumas, including the following: damage to her reputation in the publishing industry; damage to her relationship with Audible.com; inability to effectively publicize and market the Novel; lost opportunities (including lost sales of remaining rights for the Novel, and corresponding lost revenue and/or profits for the Novel); and time and expense necessary to maintain relationships with publisher time and expense needed to research issues and analyze WLG's inappropriate or inadequate advice.

32. WLG's breaches of fiduciary duties were attended by circumstances of fraud, malice, and willful and wanton conduct.

Wherefore, Plaintiff respectfully requests that judgment be entered against Defendant for compensatory and consequential damages in an amount to be proven at trial, along with post-

judgment interest, costs, attorney's fees, and such other and further relief as the Court deems just and proper.

THIRD CLAIM FOR RELIEF
(Fraudulent Misrepresentation/Inducement)

33. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. WLG falsely represented to Ms. Dumas its/Ms. Warner's knowledge, expertise, qualifications and capabilities with regard to the publishing industry, negotiation of international publishing contracts, and ability to manage the legal and accounting systems necessary to protect Ms. Dumas' interests.

35. WLG made these representations knowing and intending that Ms. Dumas would rely on them.

36. Ms. Dumas reasonably relied on these false representations by WLG regarding its/Ms. Warner's expertise, qualifications and capabilities in entering into and proceeding with the Agency Agreement.

37. WLG knew or should have known that the above misrepresentations to Ms. Dumas were false at the time they were made.

38. WLG's misrepresentations and/or fraudulent inducement directly and proximately resulted in substantial damage to Ms. Dumas, including damage to her reputation in the publishing industry, diminished ability to effectively publicize and market the Novel, and potential lost revenue and profits from the Novel.

39. WLG's false representations and/or fraudulent inducement were attended by circumstances of fraud, malice, and willful and wanton conduct.

Wherefore, Plaintiff respectfully requests that judgment be entered against Defendant for compensatory and consequential damages in an amount to be proven at trial, along with post-judgment interest, costs, attorney's fees, and such other and further relief as the Court deems just and proper.

FOURTH CLAIM FOR RELIEF
(Interference with Prospective Business Advantage)

40. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Following Ms. Dumas' valid and effective termination and revocation of WLG's authority to act as her agent, Ms. Dumas has attempted to go forward with the publication and marketing of the Novel.

42. WLG was not forthcoming and/or truthful with Ms. Dumas regarding its previous efforts to try to sell the foreign rights for *Falafel*, and otherwise attempted to frustrate or prevent Ms. Dumas' efforts to market the Novel with her publisher, particularly with regard to marketing of foreign rights. WLG's actions and/or inactions have seriously hindered, if not precluded Ms. Dumas' and her publisher's ability to market the Novel, particularly with regard to marketing of foreign rights.

43. WLG's interference with Ms. Dumas' dealings regarding the Novel was intentional and improper.

44. WLG's intentional and improper interference with Ms. Dumas' dealings has caused damages to Ms. Dumas, including damage to her reputation in the publishing industry, inability and/or diminished ability to effectively publicize, market and sell the remaining rights to the Novel, and lost opportunities, revenue and/or profits for the Novel.

Wherefore, Plaintiff respectfully requests that judgment be entered against Defendant for compensatory and consequential damages in an amount to be proven at trial, along with post-judgment interest, costs, attorney's fees, and such other and further relief as the Court deems just and proper.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment)

45. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. As a result of the Agency Agreement, Ms. Dumas granted WLG authority to act as her agent and represent her for the purposes of marketing the Novel and negotiating publishing and/or licensing agreements for it.

47. As a result of WLG/Ms. Warner's numerous wrongful or improper actions and inactions (including WLG's breaches of contract and/or fiduciary duties), Ms. Dumas' lack of confidence and trust in WLG, and the overall deterioration of Ms. Dumas' professional relationship with WLG, on or around December 10, 2015, Ms. Dumas validly and effectively revoked and terminated WLG's authority to act as her agent and represent her for the purposes of marketing the Novel and negotiating publishing and/or licensing agreements for it.

48. Ms. Dumas properly terminated the Agency Agreement based on WLG's failure to perform its agreed duties at the required standard.

49. The Agency Agreement is also unenforceable by WLG due to its breaches of the Agency Agreement, and/or WLG's breaches of its fiduciary duties.

Wherefore, Plaintiff respectfully requests that the Court declare that Ms. Dumas properly terminated the Agency Agreement and that the Agency Agreement is unenforceable by WLG, and grant Ms. Dumas such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Firoozeh Dumas respectfully requests that this Court i) enter judgment in her favor, and against Defendant, on Plaintiff's Claims for Relief and award compensatory damages in favor of Plaintiff and against Defendant in an amount to be proven at trial, including pre- and post-judgment interest, costs and reasonable attorney's fees, ii) grant the declaratory relief requested in Plaintiff's Fifth Claim for Relief, and iii) grant Plaintiff such other and further relief as the Court deems just and proper.

DATED this 2nd day of March, 2016.

Respectfully submitted,

FELDMANN NAGEL, LLC

By: /s/ David W. Feeder II

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