

CAUSE NO. 15-06-06049

DALLAS BUYER'S CLUB, LLC (TX), DALLAS
BUYER'S CLUB, LLC (CA), TRUTH
ENTERTAINMENT, LLC
PLAINTIFFS

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IN THE DISTRICT COURT

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Montgomery County - 284th Judicial Dist

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v.

VOLTAGE PICTURES, LLC and NICOLAS
CHARTIER

_____ JUDICIAL DISTRICT

DEFENDANT

MONTGOMERY CTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

Dallas Buyer's Club, LLC (TX), Dallas Buyer's Club, LLC (CA) and Truth Entertainment LLC (collectively referred herein as "Plaintiffs") files this their Original Petition against Voltage Pictures, LLC ("Voltage") and Nicolas Chartier ("Chartier"):

DISCOVERY CONTROL PLAN

1. This case is being conducted under Level 2 of Texas Rule of Civil Procedure 190.

PARTIES

2. Truth Entertainment, LLC is a Texas Limited Liability Company with its principal place of business in Montgomery County, Texas.
3. Dallas Buyer's Club, LLC is a California Limited Liability Company, with its principal place of business in Montgomery County, Texas.
4. Dallas Buyer's Club, LLC is a Texas Limited Liability Company with its principal place of business in Montgomery County, Texas..

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5. Voltage Pictures, LLC is a California Limited Liability Company who may be served by serving its registered agent for service of process Nicolas Chartier at its principal place of business at 116 N. Robertson Blvd., Suite 200, Los Angeles, California 90048.

6. Nicolas Chartier is a California resident who may be served with process at his principal place of business at 116 N. Robertson Blvd., Suite 200, Los Angeles, California 90048.

VENUE AND JURISDICTION

7. Jurisdiction is proper in this Court as the amount in controversy is within the jurisdictional limits of this Court as required by law. *See* Tex. Const. Art. 5 § 8; Tex. Gov't Code § 24.007.

8. Venue is proper in Montgomery County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1), as it is the county in which all or a substantial portion of the events or omissions giving rise to the claim occurred and it is where the principal place of business is for the Plaintiffs.

FACTS

A. Introduction

9. Truth Entertainment, LLC ("Truth") is a Texas movie production company based in The Woodlands, Texas. Joe D. Newcomb is the Chairman and CEO of Truth. Truth is the owner, and was a producer, of the movie Dallas Buyers Club.

10. Voltage was a producer and was hired as the foreign sales agent for the movie responsible for all foreign sales. Mr. Chartier is the President of Voltage. Voltage entered into a over thirty (30) agreements licensing to foreign distribution companies the right to distribute the movie in their respective territory.

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B. The Movie

11. Dallas Buyers Club is a biographical movie about Ron Woodruff, (portrayed by Matthew McConaughey) a Dallas man who in 1985 was diagnosed with AIDS and his battle around the system to help get more effective medication for himself and other AIDS patients. He co-starred with Jennifer Garner and Jared Leto. It was met with critical acclaim after premiering at the Toronto Film Festival in 2013. The film was nominated for 6 academy awards including Best Picture and Best Original Screenplay for the 2014 Academy Awards. McConaughey was nominated for and won the award for Best Actor and Jared Leto won for Best Supporting Actor. The movie had gross box office receipts in the US and Canada that amounted to over \$27,000,000.00 and foreign box office of nearly \$28,000,000 for a total of over \$55,000,000 in worldwide sales, just on box office sales alone.

C. The Movie was Almost Never Made

12. Nearly two decades after the script was originally written and already having passed through multiple studios and potential financiers, money was finally secured to fund the movie. But more bad news came in August of 2012; just 10 weeks before the movie was set to begin production in Louisiana, the financing for the film fell through. The film was thought to be doomed. McConaughey had already lost 35 pounds for the part and had commitments in January that prevented any further delays. The makers of the movie were scrambling. A Hollywood producer approached Mr. Newcomb to see if he had any interest in the movie. He read the script, loved it, and immediately began to raise funding and used his American Express card to pay for a number of the costs of filming the movie because of the huge time crunch. Within a few weeks, Mr. Newcomb and his business partner, formed Dallas Buyers Club, LLC (Texas) ("DBC") and, through it, raised \$1,600,000.00 from local investors to finance the production of the movie. In

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return, DBC and its investors were to receive a 15% return on the investment plus 35% of all backend "net proceeds". Voltage and/or an affiliate was also brought on and invested \$3,000,000 to be a co-producer and company in charge of all foreign sales with an agreed upon 15% return. With the addition of a tax incentive from the State of Louisiana the movie started production on November 11 and was amazingly completed within a mere 25 days within its \$5.6 million budget.

THE DISPUTE

A. The Deception Begins

13. Fast forward to early 2014, after the movie had been released and received its accolades, a statement was issued showing the funds received for the movie. The statement showed that Voltage and/or its affiliated company had been paid back the original \$3,000,000.00 investment plus a 15% agreed upon return on that investment. However, the DBC investors had only been paid back a little over \$1,200,000 of the original \$1,600,000.00 investment nor the agreed upon 20% return on that investment. Needless to say, the investors and Mr. Newcomb were concerned and wanted answers to some basic questions. They were still owed \$720,000.00.

14. Mr. Newcomb and the investors asked about updates on the foreign box office and requested on a number of occasions copies of the foreign distribution agreements from Mr. Chartier. Mr. Chartier refused to give them copies of the foreign distribution agreements. He refused to give them even basic information about the expectations from foreign sales.

15. When Voltage entered into the licensing agreements with the foreign distribution companies each foreign distribution company was to pay a negotiated minimum amount for the licensed rights to the movie, known as "minimum guarantees." For example, the Canadian rights were purchased by Remstar for a minimum guarantee of \$400,000.00. In paying the minimum guarantee the foreign companies would directly send the funds to a collection account operated by

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Fintage Collection Account Management ("Fintage"). Voltage would tell Fintage what the minimum guarantees were and Fintage would account for them when they were paid.

16. In May, after Fintage issued its statement for April, Plaintiffs noticed that nearly \$700,000.00 in minimum guarantees had not been paid that should have been paid. That money should have come in and the DBC investors should already have been paid back all of the investment. The Plaintiffs asked for a copy of the foreign distribution agreements and an accounting for all of the foreign countries. The response from Mr. Chartier to Mr. Newcomb, the President of Voltage (agent for foreign sales) was the following: [email from Nicolas Chartier dated May 21, 2014]

Joe how many times do we need to explain you? Seriously? We don't do accounting? Fintage does!!! And the buyers in foreign are not sending reports every quarter!!!! Can you please stop asking the same dumb stupid idiotic questions every week???? We keep telling you the same answer, emailing you the same answer, calling you with the same answer!!! Read your emails! Stop! Get a life! Go deal with your partners suing you!!! We told you a thousand times the same thing!!!!!! You're a moron. We got it. Now stop!!!

17. Mr. Chartier refused again to provide copies of the foreign distribution agreements despite Voltage's clear duty to provide information to its principal when asked. That was pointed out to Mr. Chartier, and he continued, and to this day continues to refuse to produce the foreign distribution agreements.

18. When asked about updates on the status of the minimum guarantee collections, why he was not timely responding to requests, and not living up to his own promises it was quite apparent that Voltage was too busy to deal with the Plaintiffs seemingly reasonable requests. Mr. Chartier admitted on a number of occasions that he was dealing with more than 14 movies in production or post production, he had lost staff, he was moving offices etc.... He also had already collected the money Voltage had invested plus a \$450,000.00 return on that investment.

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B. The Tip of the Iceberg?

19. Despite the fact that Voltage refused and continues to refuse to provide a copy of the foreign distribution agreements, the Plaintiffs were able to obtain copies of a few of the agreements from other sources. After reviewing these agreements, it is apparent that Mr. Chartier did not want Plaintiffs to see them because they are different than what Mr. Chartier has represented them to be.

20. Voltage and Mr. Chartier misrepresented the amount of minimum guarantees owed.

21. For example, in the Scandinavian agreement governing Norway, Sweden, Denmark and Finland the minimum guarantee should be \$50,000.00 more than represented due to what should have been a charged box office bump.

22. Further, when asked about the status of a \$34,000.00 payment due from the distributor for CIS, Voltage responded that the "last payment was cancelled due to M. McConaughy and J. Leto cancelling their PR trip." Upon review of the agreement, there is no such language. The \$34,000.00 was due upon execution of the agreement. The agreement was executed in late 2012. Furthermore, the agreement provides that an additional \$30,000.00 is possibly due because the box office numbers in CIS exceeded \$500,000.00.

23. For the country of Italy, Voltage initially represented that the minimum guarantee was \$260,000.00. When asked why only \$130,000.00 had been collected, Mr. Chartier claimed that number was wrong and that it was only \$130,000.00 and therefore no money was due from Italy. When asked for a copy of the agreement, Chartier refused to provide a copy. Plaintiffs have yet to see a copy of that agreement.

24. When asked about the \$30,000.00 minimum guarantee for Hungary, Voltage stated that the distributor defaulted, cancelled and they were trying to resell. However, public reports

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show that the movie had box office receipts of nearly \$200,000.00 in the first 3 weeks of distribution and the agreement with the distributor provided that an initial payment was to be paid on execution of the agreement and the remainder on delivery of the picture.

25. Chartier also misrepresented the accounting requirements of the foreign distributors. He stated in his May 21 email "And the buyers in foreign are not sending reports every quarter!!!".

26. They should have been providing reports every month. After obtaining some of the foreign distribution agreements the terms, in the ones Plaintiffs were able to obtain, are crystal clear. "Complete accounting statements for the Picture shall be provided on a monthly basis for the first seven (7) months after the First Theatrical Release in the Territory and thereafter quarterly, and shall be accompanied by payment of any monies then due Licensor." Mr. Newcomb simply wanted to see these reports when he asked for them back in May. Instead of providing them, Mr. Chartier proceeded to ask Mr. Newcomb to stop asking "dumb, stupid, idiotic question every week." Not the response Mr. Newcomb expected from his fiduciary who is tact with utmost loyalty and good faith to its principal. Apparently Mr. Chartier either has them but refuses to provide them, or Voltage is not following through on its promises to ensure all monies are timely accounted for and collected.

C. Amazingly, Not One Dollar has been collected on Foreign Video or Pay-per View Sales

27. The most troubling aspect of the failures to provide simple information to the Plaintiffs is the lack of any funds coming from the foreign countries on pay-per-view and video sales. Through the first quarter of 2015, the domestic distributor has reported over \$45,000,000.00

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in pay-per-view and video receipts in the United States---\$20,000,000 more than the gross box office in the United States.

28. For example, in Canada, the movie was released for video and pay-per-view sale on the exact same dates as it was in the United States. The Canadian distribution company has not reported a dollar in receipts. It has been nearly 16 months since it was first aired. The US distribution company has reported \$45 million collected--Canada \$0 and not one single accounting. The distribution agreement provides that it is to pay into the Fintage collection account between 20% and 40% of receipts for video sales depending the type of sale. If the numbers for video are similar to Canada's box office numbers, like in the United States, that means there should have been another roughly \$900,000.00-\$1,800,000.00 deposited into the collection account. Why not? How much is it? Where is that money? The agent for foreign sales should know yet it refuses to answer those questions and provide a copy of most of the agreements and furnish not one accounting. That is just one country. If the United Kingdom, which published reports state the movie made \$8,755,794.00 in box office sales, has similar numbers then another \$3,000,000.00 to \$6,000,000.00 should have been or should be coming into the collection account. The Plaintiffs may be off on the potential numbers but have no way of knowing unless they see the agreements and the accounting statements from Voltage and its distributors. It has been over a year since that first request was made. Voltage should have over 200 statements form its distributors yet claim to have none.

D. Everyone Involved in the Making of Dallas Buyers Club Has Been Harmed by Voltage's and Chartier's Actions

29. The DBC investors has finally recouped the original investment plus the 20% return but not through the collection of foreign receipts but through domestic collections and finally are

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now receiving back-end distributions as “net proceeds”, as is Truth, to the tune of 35% of all net proceeds. McConaughey, Jennifer Garner, Jean Marc Valle, the writers, Craig Borten and Melissa Wallack and a number of other participants in the movie are to receive the remaining 65% of the “net proceeds” . If foreign video/pay per view is in line with the US numbers there should have been or to be collected money in the tens of millions all of which will be distributed to those who are to receive back-end monies.

E. Anti-Piracy Actions

30. DBC entered into an Agreement with Voltage for Voltage to act as its agent to enforce Anti-piracy actions against people who have illegally downloaded or otherwise obtained the ability to watch the movie without paying for the right to watch it. The Agreement provides that DBC is to receive updates and assist in enforcing these actions. DBC has received virtually no updates and has not had any input into the actions Voltage is taking around the World. The only updates DBC receives are thorough, mostly negative, media reports about the actions of Voltage around the World. DBC has not received any funds, reports, updates or any information from Voltage on the status numerous lawsuits filed around the World in the name of DBC.

CAUSES OF ACTION

A. Breach of Fiduciary Duty

31. Voltage is the agent for DBC in charge of foreign sales and collection. As such it owes a fiduciary duty to its principal-DBC. Voltage has the duty to act with the utmost good faith, loyalty and care. Voltage has clearly breached this duty. Plaintiffs have been severely damaged by these fiduciary breaches and seeks full monetary and equitable recompense in this Court. It seeks actual and exemplary damages from Voltage. It further seeks fee forfeiture and disgorgement of all compensation and all benefits Voltage received for the years during which it was breaching its fiduciary duties to Plaintiffs. It seeks its attorney’s fees and expenses in the

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work it has, and had to do to collect the money it is owed. It also seeks an accounting from Voltage for all monies it and its distributors has received from the movie and the imposition of equitable relief.

B. Fraudulent Inducement

32. Defendants represented that it had the requisite experience and staffing to take on the role of foreign sales agent its agency duties had a duty to speak regarding its capacity to follow through on its job as foreign sales agent to collect and account for foreign sales. If Plaintiffs had known that Defendants did not have the requisite man-power to follow through on its job, DBC would not have used them as foreign sales agent.

C. Fraud

33. Defendants made material misrepresentations that were false, and that Defendants knew were false or were made recklessly without regard to their truth. Defendants made such misrepresentations with the intent that Plaintiffs rely on them, and reasonably did reasonably rely on Defendants' misrepresentations. Defendants' fraud caused Plaintiffs harm. Plaintiffs seek recovery from Defendants for its actual damages, exemplary damages, pre-judgment and post-judgment interest, costs of court, and attorneys' fees.

D. Breach of Contract

34. Voltage has breached its Power of Attorney agreement with DBC. DBC has been damaged by this breach and demands its actual damages, pre-judgment and post judgment interest, court costs and attorney's fees as allowed by law.

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CONDITIONS PRECEDENT

35. All conditions precedent to Plaintiffs claims for relief against Defendants have been performed or have occurred.

JURY DEMAND

36. Plaintiffs demands a trial by jury on all claims and counterclaims at issue in this action, and has tendered the applicable jury fee, pursuant to Rule 216 of the Texas Rules of Civil Procedure.

PRAYER

Plaintiffs pray that the Court conduct a jury trial on all claims against Voltage and Chartier. Plaintiffs further pray for recovery on their claims and causes of action against Voltage and Chartier, and for all damages, including all actual and special damages, attorneys' fees, pre-judgment and post-judgment interest, costs of court, and exemplary damages – including uncapped exemplary damages where applicable.

Plaintiffs also pray equitable relief as set forth above, disgorgement of all fees and wages paid to or collected by Defendants, disgorgement of all profits that Defendants made as a result of their breaches of fiduciary duty.

Plaintiffs further pray for all other relief, at law or in equity, to which they are entitled.

Respectfully submitted,

MCBRIDE LAW, P.C.

By: /s/ James T. McBride

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ATTORNEYS FOR PLAINTIFFS

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I, Barbara Gladden Adamick, do hereby
Certify 11 pages in Cause # 150806049
as being a true and correct copy of the
Original Record now on file in the District
Clerk's Office of Montgomery County, Texas.
Witness My Official Seal of Office in, Conroe, Texas
On This the 8 Day of July, 2016
By: James Needeth Deputy