

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
JAYME GORDON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:11-cv-10255-JLT
	)	
DREAMWORKS ANIMATION SKG,	)	
INC., DREAMWORKS ANIMATION	)	
LLC, and PARAMOUNT PICTURES	)	
CORP.,	)	
	)	
Defendants.	)	
	)	
_____	)	

**AFFIDAVIT OF JONATHAN ZAVIN IN SUPPORT OF MOTION TO  
DISMISS FOR PLAINTIFF’S FAILURE TO APPEAR AT DEPOSITION**

I, JONATHAN ZAVIN, declare as follows:

1. I am a partner in the law firm of Loeb & Loeb LLP (“Loeb & Loeb”), one of the counsel of record for defendants DreamWorks Animation SKG, Inc., DreamWorks Animation LLC and Paramount Pictures Corp. (collectively, “Defendants”). I have personal knowledge of the facts set forth in this Affidavit and, if called as a witness, could and would testify competently to such facts under oath. I respectfully submit this declaration in support of Defendants’ Motion to Dismiss Plaintiff’s Complaint, and for related sanctions and relief in connection with Plaintiff Jayme Gordon’s refusal to appear for, and testify at, his deposition.

2. This case was filed in February of 2011. The film, *Kung Fu Panda*, was widely released in theaters in the United States in June of 2008. This is the second claim that I have defended relating to assertions that the exact same elements of the film the Gordon claims were copied from him did not originate with DreamWorks Animation. I was counsel of record in *Dunn v. DreamWorks Animation et al.*, filed in Los Angeles Superior Court (BC 438833) in June

of 2010. Judgment was entered in favor of DreamWorks in that case after a jury verdict was issued finding that DreamWorks did not use Mr. Dunn's alleged ideas in creating *Kung Fu Panda*. No mention of Mr. Gordon, or his work, was made by any witness in the trial as no one who worked on the film had heard of Mr. Gordon, or his work, until 2011 when he filed this lawsuit.

3. In this case, Defendants have already produced nearly 200,000 pages of documents relating to the creation and development of *Kung Fu Panda*. In those documents, there is not a single page that supports the idea that DreamWorks used any works created by Mr. Gordon to create its film or any of its characters or storylines. In fact, the only communication between Plaintiff and DreamWorks consists of a single standard rejection letter sent to Gordon in October of 1999, telling him that DreamWorks does not accept unsolicited materials and was declining his request to submit something to DreamWorks. Attached hereto as Exhibit "A" is a true and correct copy of the standard rejection letter produced by Mr. Gordon dated October 15, 1999 and stating that DreamWorks was declining to his request to submit a project ("Although we appreciate your interest, our company policy strictly prohibits our consideration of any unsolicited material. We generate our projects internally, and therefore we must decline your request to submit your proposed project.").

4. Although Plaintiff Gordon retained this rejection letter, he has not produced the outgoing letter that he sent to DreamWorks nor has he provided any evidence of what ideas, art or stories he supposedly sent, if any, that resulted in his receipt of the rejection letter. Plaintiff's counsel, in the complaint, specifically alleged that a package of Gordon's work was sent to DreamWorks in 1999, but in spite of Defendants' repeated request that this package be turned over, no such documents have been produced. Instead, Mr. Madera, during a meet and confer phone call on this subject, confirmed that no such package exists.

5. Plaintiff's counsel, Fish & Richardson, alleged in the Complaint in this action that Plaintiff Gordon created his "Kung Fu Panda Power" works on a computer software program called Microsoft Photoshop. Defendants requested that these files, along with all electronic versions of Mr. Gordon's artwork and stories be produced. These files have not been produced in spite of Defendants' repeated requests. Aside from files that relate to the electronic information that was included on Gordon's websites in or about 1999/2000, which files have no bearing on the claim that Plaintiff ever created either "Kung Fu Panda Power" or the "Five Fists of Fury", none of Plaintiff's electronic files containing his artwork or stories were turned over in this lawsuit.

6. Shortly after the exchange of initial disclosures, Defendants requested that Mr. Gordon turn over his computer for forensic examination so that they could review the original electronic files, including the Microsoft Photoshop files alleged in the Complaint, that were created by Mr. Gordon. Attached hereto as Exhibit "B" is a true and correct copy of a letter dated August 11, 2011 sent to Plaintiff's counsel and requesting the forensic review of Plaintiff Gordon's computers and files.

7. By letter dated August 15, 2011, Plaintiff's counsel agreed to make all of Mr. Gordon's computers and electronic files available for forensic examination. Attached hereto as Exhibit "C" is a true and correct copy of a letter my firm received from Plaintiff's counsel agreeing to make Mr. Gordon's electronic media available, subject to the conditions that his electronic media be returned to him, and that the report of the forensic examiner be shared with Plaintiff's counsel.

8. Two days later, on August 17, 2011, at the Scheduling Conference on this matter, Plaintiff's counsel, Mr. Gregory Madera, stated that Mr. Gordon did not have a computer. This statement strained credulity, as Plaintiff Gordon has operated multiple websites, and continues to

operate at least one of them, is specifically alleged to have used Microsoft Photoshop to create his artwork, and has used multiple email addresses over the course of the last decade.

Additionally, Mr. Gordon's own initial disclosures include printouts of internet websites and online articles about *Kung Fu Panda*.

9. Defendants pointed out these issues to Fish & Richardson (attached hereto as Exhibit "D" is a true and correct copy of a letter my firm sent to Plaintiff's counsel addressing the unlikelihood of Plaintiff's not having ownership of a computer). Then, on a September 9, 2011 conference call, Mr. Madera stated that, contrary to his prior representations, Mr. Gordon currently has two computers.

10. Mr. Madera stated that these computers do not contain any discoverable information, because the computer that Mr. Gordon used in 2008 to create his electronic "Kung Fu Panda Power" art and stories was thrown away by the Plaintiff, and the files that were on that computer – including the electronic files that were used to print out the works that were submitted to the Copyright Office – no longer exist.

11. On August 17, 2011 after the Court's Scheduling Conference, Defendants noticed Plaintiff Gordon's deposition for September 22, 2011. Attached hereto as Exhibit "E" is a true and correct copy of Defendants' deposition notice.

12. A few days after receiving this deposition notice, one of Plaintiff's lawyers, Michael Kane, responded by stating that Plaintiff's deposition could not take place during the month of September, and that the earliest date for this deposition was October 19, 2011. Attached hereto as Exhibit "F" is a true and correct copy of Mr. Kane's email.

13. Defendants stated that they would prefer an earlier date and noted that Mr. Gordon appeared to be represented by several attorneys, but agreed that October 19<sup>th</sup> would be the date of the deposition if Plaintiff's counsel was refusing to hold the deposition at any earlier

date. Attached hereto as Exhibit “G” is a true and correct copy of my response to Mr. Kane’s email confirming the October 19, 2011 date for Mr. Gordon’s deposition. Public records reveal that Plaintiff Gordon has a criminal record, has had a restraining order entered against him, and has been involved in other civil lawsuits prior to the filing of this action.

14. Five days prior to Mr. Gordon’s deposition, Plaintiff’s counsel, Mr. Madera, sent a letter stating that Mr. Gordon believed that investigators had been in contact with his neighbors and had been observing Mr. Gordon himself. Mr. Madera made no mention of Mr. Gordon’s upcoming deposition in his letter. Attached hereto as Exhibit “H” is a true and correct copy of Mr. Madera’s October 14, 2011 letter. In his letter, Mr. Madera demanded that any report conducted of Mr. Gordon’s investigation be produced to him. Mr. Madera did not cite to any legal basis for this demand and did not explain, in any way, why work product should be produced to opposing counsel.

15. Defendants declined to produce any such information, and I specifically explained to Mr. Madera that the results of an investigation were work-product and were protected from disclosure. Attached hereto as Exhibit “I” is a true and correct copy of my October 17, 2011 letter to Mr. Madera. Defendants further explained that no illegal conduct took place, and that none was claimed to have transpired.

16. A few hours later, on Monday October 17<sup>th</sup>, and less than 48 hours before Mr. Gordon’s October 19<sup>th</sup> deposition, Mr. Madera wrote another letter, claiming that Mr. Gordon’s deposition would not be going forward, and that he was dissatisfied with Defendants’ refusal to turn over attorney work-product. Attached hereto as Exhibit “J” is a true and correct copy of Mr. Madera’s October 17, 2011 letter. Mr. Madera provided no legal basis for his demands or assertions, and made no attempt to meet and confer over the legal issues he believed supported his client’s refusal to appear for his deposition.

