

JUDGE JONES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WAGERLOGIC LIMITED,

Plaintiff,

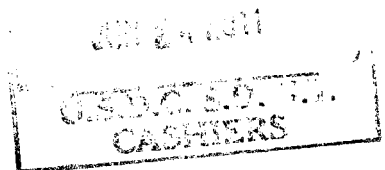
vs.

PARAMOUNT DIGITAL
ENTERTAINMENT, a division of
PARAMOUNT PICTURES CORPORATION,

Defendant.
-----X

Civil Action No. **11 CIV 4310**

COMPLAINT



Plaintiff WagerLogic Limited (“WagerLogic”), by its attorneys Reed Smith LLP, as and for its complaint against defendant Paramount Digital Entertainment (“PDE”), a division of Paramount Pictures Corporation (“Paramount”), alleges as follows:

NATURE OF THE ACTION

1. WagerLogic is a member of the CryptoLogic group of companies, a global leader in the development of branded and non-branded casino and slot-machine-style Internet games. In branded games, one of the keys to success is the strategic partnerships established by WagerLogic with media companies such as defendant PDE, from which WagerLogic licenses intellectual property for use in its branded Internet games featuring iconic comic book superheroes and classic films.

2. PDE develops and distributes Paramount-owned properties across worldwide digital distribution platforms, including online, mobile and portable devices, videogames, virtual worlds and emerging technologies. Paramount-owned properties include *Forrest Gump* and *Braveheart*, to name a few.

3. This dispute arises out of a December 15, 2008 license agreement between WagerLogic and PDE (the “License Agreement”), pursuant to which PDE granted to WagerLogic the exclusive license to use intellectual property associated with twenty “existing” and six “future” Paramount motion pictures to develop online casino games based on those pictures.¹ In exchange for this license, WagerLogic agreed to pay (and has paid) PDE significant guarantee and licensing fees. The License Agreement also required WagerLogic to market and sell at least one game based on a minimum of five “existing” pictures by December 15, 2010.

4. Over the next two years of the License Agreement, WagerLogic timely paid license fees to Paramount and dedicated significant time and resources to develop, market and sell three online casino games, each themed to a different “existing” Paramount motion picture. All three games received outstanding reviews from *Casino Advisor*, the world’s largest online casino guide. WagerLogic also had two additional games in development but not yet ready for release under the License Agreement.

5. Despite this, on February 23, 2011, PDE purported to terminate the License Agreement because WagerLogic (a) failed to pay a \$250,000 guarantee and \$250,000 final license fee installment on December 1, 2010; and (b) distributed online casino games based on three (as opposed to five) “existing” pictures by December 15, 2010. PDE, however, had, and continues to have, no right to terminate the License Agreement under the plain terms thereof. WagerLogic timely cured the alleged payment breach well within the thirty day cure period specified in the License Agreement by paying \$500,000 to PDE one day after the February 23 notice of termination, and PDE may not terminate the License Agreement for a breach of the December 15 “marketing date.”

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the License Agreement.

6. Nonetheless, PDE somehow continues to assert that the License Agreement has been terminated. Thus, through this action, WagerLogic seeks a judgment declaring that (a) WagerLogic adequately cured its alleged payment default; (b) PDE has no right to terminate the License Agreement based on WagerLogic's purported failure to develop certain games on or before December 15, 2010; and (c) the License Agreement remains in full force and effect.

PARTIES

7. WagerLogic is a corporation organized under the laws of Cyprus, with its principal place of business at 41-49 Agiou Nicolaou Street, Nimeli Court, Block A, 3rd Floor, Engomi, 2408 Nicosia, Cyprus.

8. Upon information and belief, Paramount is a Delaware corporation with its principal place of business at 5555 Melrose Avenue, Los Angeles, California 90038. PDE is a division of Paramount.

JURISDICTION AND VENUE

9. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) as the controversy is between a citizen of a State and a citizen of a foreign state, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. This Court has authority to award the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

11. Personal jurisdiction over PDE is proper in this Court because PDE conducts business in New York and has agreed in paragraph 25 of the License Agreement to submit itself to the jurisdiction of this Court.

12. Venue is proper under 28 U.S.C. § 1391(a), as PDE is a corporation subject to personal jurisdiction in this District, and therefore is deemed a resident of this District pursuant

to 28 U.S.C. § 1391(a).

13. Venue in this District is also proper because PDE consented to the jurisdiction of this Court pursuant to paragraph 25 of the License Agreement.

FACTUAL BACKGROUND

The License Agreement

14. PDE and WagerLogic entered into the License Agreement, whereby PDE granted to WagerLogic, among other things, the exclusive license to use Property associated with twenty Existing Pictures and six Future Pictures to develop and sell Licensed Games, which are defined as “interactive Casual Gambling style software games . . . themed to the Property per Principle Picture . . . playable by end-users via PCs connected to the Internet.”²

15. In exchange for this license, pursuant to paragraph 7.1.1 of the License Agreement, WagerLogic agreed to pay PDE an Existing Pictures License Fee payable in installments, with a final installment of \$250,000 due on December 1, 2010, and a Future Pictures Guarantee of \$250,000, also due on December 1, 2010. If WagerLogic failed to make these payments, under paragraph 15.1 of the License Agreement, PDE “may terminate this Agreement on thirty (30) days prior written notice, provided [WagerLogic] shall not have remedied such failure within such (30) day period.”

16. All notices, including notices of termination, must be sent in accordance with paragraph 24 of the License Agreement, which provides, in pertinent part:

Notices hereunder shall be given in writing and sent by registered or certified mail, return receipt requested, or by prepaid telegram or nationally recognized express carrier, addressed to Paramount at the address indicated in the Agreement, to the attention of Executive Vice President, Worldwide Business Affairs or to [WagerLogic] at the address indicated in Section 1 above, or such

² A copy of the License Agreement is not being filed herewith due to a confidentiality provision therein prohibiting disclosure of the License Agreement and its terms.

other official as [WagerLogic] shall designate in writing.

The address provided for WagerLogic is 41-49 Agiou Nicolaou Street, Nimeli Court, Block A, 3rd Floor, Engomi, 2408 Nicosia, Cyprus.

17. Under paragraph 26 of the License Agreement, no provision of the License Agreement can be “modified except by a written instrument signed by the parties [there]to, nor may it be amended or rescinded, other than as provided by its terms, except by a writing duly executed by an authorized officer of the party to be charged.” WagerLogic never waived its right to receive notices in accordance with paragraph 24 of the License Agreement.

18. The Agreement also requires WagerLogic to “distribute and commence the marketing and offering for sale of at least” (a) one Licensed Game themed to a minimum of five Existing Pictures by December 15, 2010; and (b) one new Licensed Game themed to each Future Picture within two years of the commencement of the applicable Future Pictures Term (each a “Marketing Date,” and collectively the “Marketing Dates”). The Future Pictures Term for certain of the Future Pictures does not commence until May 1, 2012, and for the remaining Future Pictures, not until June 3, 2012.

19. In addition, WagerLogic is required to “notify Paramount in writing by no later than three (3) years from the Effective Date of its firm commitment to release Licensed Games based on each of the remaining Pictures (“Commitment Notice”).”

20. If WagerLogic failed to meet any Marketing Date or timely submit the Commitment Notice, under paragraph 10.3.1 of the License Agreement, PDE “may terminate this Agreement and the rights granted to [WagerLogic] with respect to such Property(ies) that do not comply with the Marketing Date and/or are not listed in the Commitment Notice on ten (10) days prior written notice.” There is no cure period for breach of paragraph 10.3 of the License

Agreement, but the remedy available to PDE for such breach is limited by its plain terms to termination of the rights granted to WagerLogic with respect to only those Property(ies) that did not comply with the Marketing Date and/or were not listed in the Commitment Notice.

21. The License Agreement “shall be construed and interpreted pursuant to the laws of the State of New York without giving effect to its conflict of laws provisions,” pursuant to paragraph 25 thereof. That paragraph also provides that “[t]he prevailing party in any legal action hereunder shall be entitled to recover its actual legal costs and expenses, including, without limitation, attorneys’ fees.”

PDE Purports To Terminate The License Agreement

22. On February 23, 2011, PDE served WagerLogic with a self-styled “Notice of Termination,” asserting that WagerLogic breached paragraph 7.1.1.1.5 of the License Agreement by failing to pay the final installment of the Existing Pictures License Fee of \$250,000, and breached paragraph 7.1.1.2 of the License Agreement by failing to pay the Future Pictures Guarantee of \$250,000, both of which were due on December 1, 2010 (the “Notice of Termination”).³

23. Under paragraph 15.1 of the License Agreement, WagerLogic had thirty days to cure a breach of paragraph 7.1.1. following receipt of written notice of termination sent in accordance with the notice requirements of paragraph 24. The Notice of Termination is the first written notice of termination provided by PDE to WagerLogic in accordance with paragraph 24 of the License Agreement or otherwise, thereby triggering the thirty day cure period under paragraph 15.1 of the License Agreement.

24. On February 24, 2011, one day after receiving the Notice of Termination,

³ A copy of the Notice of Termination is not being filed herewith due to a confidentiality provision in the License Agreement prohibiting its disclosure.

WagerLogic remitted payment to PDE in the amount of \$500,000, with \$250,000 for the final installment of the Existing Pictures License Fee and \$250,000 for the Future Pictures Guarantee. PDE acknowledged receipt of this payment one day later, on February 25, 2011, but unilaterally decided to “refuse to accept” and place in escrow the \$250,000 Future Pictures Guarantee. As PDE has no right to unilaterally reject this payment, WagerLogic remedied any breach of paragraphs 7.1.1.1.5 or 7.1.1.2 of the License Agreement well within the thirty day cure period provided for under paragraph 15.1 of the License Agreement. Accordingly, PDE had no right to terminate the License Agreement under paragraph 15.1 thereof.

25. PDE has stated in subsequent correspondence that actual notice of a breach, as opposed to written notice of termination that complies with paragraph 24 of the License Agreement, is sufficient under New York law, and PDE provided actual notice of termination to WagerLogic by email dated January 12, 2011.⁴ Thus, according to PDE, WagerLogic’s payment of \$500,000 on February 24, 2011, and received by PDE on February 25, 2011, was made two weeks after the cure period expired. The January 12, 2011 email, however, never references PDE’s purported termination of the License Agreement and, in fact, on several subsequent occasions, PDE made clear that it had not yet terminated the License Agreement and the cure period had not even commenced.

26. For example, PDE’s email of February 15, 2011 to WagerLogic makes clear that no notice of termination had yet been given, and states that:

[PDE] can give [WagerLogic] 24 more hours before sending out the termination letter, which we’ll do if we don’t have a response from [WagerLogic] by the end of business day tomorrow. Not to worry, even if you’re unable to get a response

⁴ A copy of the January 12, 2011 email is not being filed herewith due to a confidentiality provision in the License Agreement prohibiting its disclosure.

by then and we send out the letter, it can still be remedied.⁵

If PDE believed, as it now claims, that the January 12, 2011 email was a notice of termination, then PDE would not have been able to give “24 more hours before sending out the termination letter,” and the thirty day cure period would have expired on February 11, 2011, four days prior to the February 15 email, and the alleged breach could not “still be remedied.”

27. PDE also asserted in the Notice of Termination that WagerLogic breached paragraph 10.3 of the License Agreement by failing to distribute at least one Licensed Game themed to a minimum of five Existing Pictures by the Marketing Date of December 15, 2010. Instead, WagerLogic distributed Licensed Games themed to only three Existing Pictures by that date.

28. As alleged above, in the event WagerLogic fails to meet a Marketing Date, under paragraph 10.3.1 of the License Agreement, PDE “may terminate this Agreement and the rights granted to [WagerLogic] with respect to such Property(ies) that do not comply with the Marketing Date” Thus, the remedy available to PDE is to terminate the rights granted to WagerLogic with respect to two Existing Pictures that were not distributed in a Licensed Game by the Marketing Date of December 15, 2010, and not, as PDE contends, a full termination of the License Agreement.

PDE’s Cease And Desist Demand

29. Over the following months, the parties attempted to negotiate a mutually acceptable resolution of their dispute. In a May 6, 2011 letter to WagerLogic’s counsel, PDE’s counsel asserted that PDE already had terminated the License Agreement and demanded that WagerLogic immediately cease all development, distribution or exploitation of any Licensed

⁵ A copy of the February 15, 2011 email is not being filed herewith due to a confidentiality provision in the License Agreement prohibiting its disclosure.

Games.

30. In addition, PDE stated that WagerLogic must destroy all “gold masters” of the Licensed Games and provide immediate proof of destruction to PDE. PDE also asserted that the licenses granted to WagerLogic have automatically ceased and reverted back to PDE, which would now relicense the Properties associated with the Existing and Future Pictures to other licensees.

31. Notably, none of these remedies are available to PDE under paragraph 10 of the License Agreement. They are remedies provided only under paragraph 15, the breach of which unquestionably has been cured by WagerLogic’s payment of \$500,000 to PDE on February 24, 2011.

WagerLogic Refuses PDE’s Demand

32. By letter dated May 9, 2011, WagerLogic reiterated its position that PDE had, and continues to have, no right to terminate the License Agreement.

33. In addition, WagerLogic advised PDE that it would continue to exploit its license rights with respect to the Properties and PDE has no right to relicense those Properties to licensees other than WagerLogic, as the License Agreement remains in full force and effect.

Negotiations Reach An Impasse

34. The parties made further attempts to negotiate an amicable resolution to their dispute, but those efforts proved unsuccessful.

35. As a result of the foregoing, an actual and justiciable controversy exists between WagerLogic and PDE regarding whether PDE has a right to terminate the License Agreement. To resolve the legal and factual questions raised by PDE and to afford relief from the uncertainty and controversy that PDE’s assertions have precipitated, WagerLogic is entitled to a declaratory

judgment concerning its rights under the License Agreement.

CLAIM FOR RELIEF
(Declaratory Judgment)

36. WagerLogic repeats and realleges the allegations in paragraphs 1 through 35 as if fully set forth herein.

37. WagerLogic and PDE have conflicting positions as to their respective rights and legal relations and obligations pursuant to the License Agreement, and a declaration of the rights and legal relations arising therefrom is necessary and essential for the preservation and enjoyment of the license rights affected thereby.

38. WagerLogic contends that (a) it has cured the alleged payment breach by remitting payment to PDE in the amount of \$500,000 for the Existing Pictures License Fee and the Future Pictures Guarantee within the thirty day cure period provided in paragraph 15.1 of the License Agreement; and (b) the only remedy afforded to PDE for the alleged breach of the Existing Pictures Marketing Date is termination of the rights granted to WagerLogic with respect to two of the five Existing Pictures that were not distributed in a Licensed Game by such date.

39. PDE, on the other hand, contends that WagerLogic has failed to cure the alleged payment breach and that the remedy for this breach and WagerLogic's alleged breach of the Existing Pictures Marketing Date is termination of the entire License Agreement.

40. WagerLogic has no adequate remedy at law.

41. By reason thereof, WagerLogic is entitled to a judgment, pursuant to 28 U.S.C. § 2201, declaring that (a) WagerLogic adequately has cured its alleged failure to pay the final installment of the Existing Pictures License Fee of \$250,000 and the Future Pictures Guarantee of \$250,000 by paying \$500,000 to PDE on February 24, 2011; (b) PDE has no right to terminate the License Agreement based on an alleged breach of the Existing Pictures Marketing Date; and

(c) the License Agreement was not properly terminated and remains in full force and effect.

WHEREFORE, plaintiff WagerLogic respectfully demands judgment as follows:

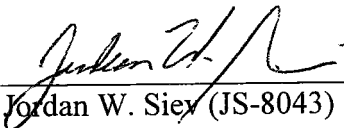
A. Declaring that (i) WagerLogic adequately has cured its alleged failure to pay the final installment of the Existing Pictures License Fee of \$250,000 and the Future Pictures Guarantee of \$250,000 by paying \$500,000 to PDE on February 24, 2011; (ii) PDE has no right to terminate the License Agreement based on an alleged breach of the Existing Pictures Marketing Date; and (iii) the License Agreement was not properly terminated and remains in full force and effect.

B. Awarding WagerLogic the costs and disbursements of this action, including attorneys' fees, pursuant to paragraph 25 of the License Agreement; and

C. Granting such other relief as may be appropriate, and as the Court deems just and proper.

Dated: New York, New York
June 24, 2011

REED SMITH LLP

By: 
Jordan W. Siey (JS-8043)

599 Lexington Avenue
New York, NY 10022-7650
Tel: (212) 521-5400
Fax: (212) 521-5450

Counsel for Plaintiff WagerLogic Limited