

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 PARAMOUNT PICTURES :
 CORPORATION, :
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 Plaintiff, :
 :
 -against- :
 ANTHONY PUZO, AS EXECUTOR OF :
 THE ESTATE OF MARIO PUZO, :
 :
 Defendant. :
 :
 ----- X

Civil Action No. 12 CIV-1268 (AJN)

ANSWER TO FIRST AMENDED COMPLAINT AND COUNTERCLAIM

Defendant, Anthony Puzo, as Executor of the Estate of Mario Puzo (“Defendant”) answers the First Amended Complaint dated as of April 2, 2012 (the “FAC”) as follows:

1. Defendant denies the allegations of paragraph 1 of the FAC and alleges that, rather than the benign motivation it alleges, Paramount Pictures Corporation (“Paramount”) seeks, by this action, to disregard its contractual promises to Mario Puzo (“Puzo”) and, by its threats of punitive and treble damages, to coerce Puzo’s children into ceding valuable rights to Paramount without compensation.

2. Defendant denies the allegations of paragraphs 2 and 3 of the FAC, except that Puzo did enter into a written contract of adhesion with Paramount in 1969, prepared entirely by Paramount on Paramount’s printed form, and that, in exchange for a minimal payment, this agreement granted Paramount certain rights in “The Godfather,” but Puzo expressly deleted and excluded from the granted rights the right “to publish said work

and/or any version or adaptations thereof, or any part or parts thereof, and to vend copies thereof.” Not being granted to Paramount, such excluded rights were reserved in Puzo, including the right to publish books that include Puzo’s characters from “The Godfather” in new and different situations. Defendant alleges that this deletion and reservation of such book publishing rights in the 1969 Agreement was well known to Paramount in its original complaint when it falsely pleaded the supposed content of that agreement.

3. Answering paragraph 4 of the FAC, Defendant denies that Paramount acquired the rights it claims and denies that “Godfather 3” was highly acclaimed.

4. Answering paragraph 5 of the FAC, Defendant denies that, at the time alleged, Defendant expressed interest in creating and publishing more than one sequel novel to “The Godfather.”

5. Answering paragraph 6 of the FAC, Defendant denies that Paramount’s motivation for the 2002 memorandum was as alleged or that Paramount has fully or correctly characterized the content of that memorandum. Defendant alleges that Paramount’s self-serving motivation was to coerce Puzo’s children into ceding to Paramount the motion picture rights in the first sequel novel without compensation.

6. Defendant denies the allegations of paragraph 7 of the FAC, except that it did publish “The Godfather’s Revenge.” Defendant alleges that Paramount has known of that sequel novel since 2006 and, prior to the filing of this action, made no objection to its publication.

7. Answering paragraph 8 of the FAC, Defendant denies that it has only “now” informed Paramount that it intended to publish another “Godfather” sequel and

alleges that, during 2010 and 2011, it repeatedly informed Paramount in writing of its intention to enter into an agreement with a book publishing company for the publication of another “Godfather” novel. Copies of these notifications to Paramount are attached as Exhibits “A” and “B” hereto and incorporated by reference herein. Until late in 2011, after the publishing contract had been signed, Paramount made no objection to the intended publication or defendant’s making of such a publishing contract.

8. Defendant denies the allegations of paragraph 9 of the FAC, except that, for years prior to cancellation of Paramount’s rights for its breach and repudiation of the 1969 Agreement, as alleged in the counterclaims filed in this action, Defendant had asserted that it had the right to publish sequels to “The Godfather.” Prior to such cancellation of Paramount’s rights, Defendant could not convey motion picture rights in sequel novels to any third party, because Paramount had motion picture rights in the characters that appeared in the original book “The Godfather.” However, Paramount had no rights in original material created by writers hired by defendant and included in sequel novels, such as new and different situations involving those original characters or new characters or stories. Accordingly, Paramount did not own the motion picture rights in such sequel novels.

9. Defendant denies the allegations of paragraph 11 of the FAC, including the allegation of Paramount’s supposed feelings of “respect” for Puzo’s contributions, and alleges that Paramount has no such respect and has repeatedly attempted to coerce Puzo’s children into ceding valuable rights to Paramount without compensation, has, in effect, sued Puzo’s children in this action as such a coercive tactic, filing this action seeking

punitive and treble damages against Puzo's children, without even a prior warning or notice.

10. Defendant denies the allegations of paragraphs 12 and 13 of the FAC, except that Paramount has purported to register the title of Puzo's novel "The Godfather" as a trademark. Defendant alleges that Paramount's "Godfather" trademarks are not valid and that neither such trademarks nor any other right of Paramount can preclude use of the words "The Godfather" in the title of books defendant is entitled to publish and that Paramount's registration of such marks should be cancelled and that, in any event, Paramount has no right to any "distinctive look" of the words "The Godfather" or the name "Mario Puzo" or of any other word or name.

11. Answering paragraphs 14 and 17 of the FAC, Defendant denies that it has committed or has announced plans to commit any infringing acts whatsoever.

12. Answering paragraph 19 of the FAC, Defendant incorporates and repleads its response to the paragraphs incorporated by reference.

13. Defendant denies each and every allegation of paragraphs 20, 21, 22, 23, 24, 25, 26, 28, 29 and 30 of the FAC, except that Paramount acquired certain rights in "The Godfather" pursuant to its 1969 contract of adhesion with Puzo and, subject to defendant's rights, including book publishing rights and rights of cancellation, the copyright in three "Godfather" films is presently registered in Paramount's name.

14. Answering paragraph 31 of the FAC, Defendant repleads its response to the paragraphs incorporated by reference.

15. Answering paragraph 32 of the FAC, Defendant denies the validity of Paramount's trademarks and the propriety and truth of its trademark applications.
16. Defendant denies each and every allegation of paragraphs 33, 34 and 35 of the FAC.
17. Answering paragraph 36 of the FAC, Defendant repleads its response to the paragraphs incorporated by reference.
18. Defendant denies each and every allegation of paragraphs 37, 38 and 39 of the FAC.
19. Answering paragraph 40 of the FAC, Defendant repleads its response to the paragraphs incorporated by reference.
20. Answering paragraphs 41 and 42 of the FAC, Defendant denies that the allegations of these paragraphs fully or accurately set forth the disputes between defendant and Paramount.
21. Defendant denies each and every allegation of paragraphs 43 and 44 of the FAC and alleges that Paramount's claims are not asserted in good faith, creating a supposed controversy that is not in fact "actual" or bona fide.

AFFIRMATIVE DEFENSES

1. Paramount's claims with respect to any previously published sequel novel are barred by the statute of limitations.
2. All of Paramount's claims are barred by laches.
3. All of Paramount's claims are barred by waiver and consent.
4. All of Paramount's claims are barred by estoppel.

5. All of Paramount's claims are barred by its own unclean hands.

6. The 1969 Agreement is a contract of adhesion prepared entirely by Paramount on Paramount's printed form. If the 1969 Agreement were construed as Paramount purports to claim, it would be procedurally and substantively unconscionable and unenforceable.

7. All of Paramount's claims are barred by its own acts of willful and material breach and repudiation of the agreements between Mario Puzo and Paramount.

COUNTERCLAIMS

As and for its counterclaim against Paramount, Defendant and counterclaimant (the "Puzo Estate") alleges the following:

FACTS RELEVANT TO EACH CLAIM

1. In 1967, Mario Puzo ("Puzo") entered into a written option agreement, entirely prepared by Paramount, giving Paramount an option on certain rights in Puzo's novel "The Godfather" but expressly excluding and reserving in the author "book publishing rights."

2. In 1969, Paramount entered into a written contract of adhesion with Puzo, prepared entirely by Paramount on Paramount's printed form, granting certain rights in "The Godfather" to Paramount, but, by reason of interlineation by Puzo, not including the right "to publish said work and/or any versions or adaptations thereof, or any part or parts thereof, and to vend copies thereof." Such deleted rights were reserved in Puzo.

3. By reason of the foregoing, Puzo reserved and retained inter alia the right to write and publish books, including the characters from “The Godfather” in similar situations or in new and different situations.

4. Puzo and the Puzo Estate, representing Puzo’s children, have done everything required of them under the foregoing agreements and are in no manner or respect in breach thereof.

5. By claiming that the Puzo Estate cannot publish books that include characters from “The Godfather” in situations in or referred to in “The Godfather” or in new and different situations and in seeking to interfere with and prevent the Puzo Estate from publishing such books, and in claiming that it is automatically the owner of motion picture rights in the entirety of any sequel or prequel book based on characters from “The Godfather,” including all original material created by or for Puzo or the Puzo Estate, Paramount is in willful and material breach of the 1969 Agreement with Mario Puzo and has repudiated the essential rights of Puzo and the Puzo Estate under that Agreement.

FIRST COUNTERCLAIM
(Declaratory Judgment: Cancellation of Contract Rights)

6. Defendant and Counterclaimant incorporate by reference paragraphs 1 through 5 of this Counterclaim as though fully set forth herein.

7. By reason of Paramount’s material breach and repudiation of its 1969 Agreement with Mario Puzo, the Puzo Estate has, in addition to its other rights and remedies, the right to cancel and terminate Paramount’s rights under the 1969

Agreement. The Puzo Estate, by this counterclaim, exercises that right of termination and cancellation and asks the Court to declare such rights terminated and canceled.

SECOND COUNTERCLAIM
(Breach of Contract)

8. Defendant and Counterclaimant incorporate by reference paragraphs 1 through 5 of this Counterclaim as though fully set forth herein.

9. As a direct and proximate result of Paramount's material breach and repudiation of the 1969 Agreement, the Puzo Estate has incurred and will incur substantial monetary damages in a sum not yet known, but which the Puzo Estate alleges on information and belief will exceed the sum of \$5 million.

THIRD COUNTERCLAIM
(Tortious Interference with Contract)

10. Defendant and Counterclaimant incorporate by reference paragraphs 1 through 5 of this Counterclaim as though fully set forth herein.

11. During 2011, the Puzo Estate entered into contracts with Grand Central Publishing Co. and with an English subsidiary of Random House (together called "The Publishers") pursuant to which The Publishers agreed to publish a book including characters from "The Godfather" in new and different situations (the "Publishing Contracts").

12. During February 2012, knowing of the Publishing Contracts, Paramount falsely asserted to The Publishers that the Puzo Estate had no right to publish that book, seeking to induce The Publishers to delay or withhold their performance of the Publishing Contracts.

13. As a direct and proximate result of Paramount's wrongful conduct, the Puzo Estate has incurred and will incur substantial monetary damages in a sum as yet unknown.

14. Paramount's conduct was willful, malicious and oppressive, entitling the Puzo Estate to punitive damages.

WHEREFORE, the Estate prays judgment as follows:

1. That Paramount take nothing by its complaint;
2. That the Court declare that the Puzo Estate is entitled to publish and vend books including the characters and situations in "The Godfather" and depicting such characters in the same, similar or different situations and that Paramount does not own motion picture rights in original material created by or for the Puzo Estate and included in sequel or prequel books to "The Godfather";
3. That the Court declare Paramount's rights under the 1969 Agreement terminated and canceled for its material breach and repudiation of that Agreement;
4. For damages in such sum as shall be determined;
5. For punitive damages; and

6. For costs of suit and such other relief as the Court shall deem proper.

Dated: April 10, 2012
Armonk, N.Y.

BOIES, SCHILLER & FLEXNER LLP

By: /s Motty Shulman

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OUR FILE NUMBER
72550-00039

February 4, 2010

VIA E-MAIL AND U. S. MAIL

Daniel Ferleger, Esq.
Paramount Pictures
5555 Melrose Avenue
Admin Bldg., Room 116
Hollywood, California 90038-3197
Daniel_Ferleger@paramount.com

Dear Dan:

Enclosed is a screenplay by Mario Puzo for a "Godfather" prequel and sequel. It was found after Mario's death.

The Puzo Estate is making a deal to publish a novel based on the screenplay's 61 pages of 1930s "back-story." As presently planned, the remainder of the screenplay dealing with "current" action will not be in the book.

If Paramount is interested in a potential film, please let me know.

Regards,



BERTRAM FIELDS

BF/rjd
Enclosure

cc: Anthony Puzo
Neil Olson

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May 23, 2011

VIA E-MAIL AND U. S. MAIL

Daniel Ferleger, Esq.
Paramount Pictures
5555 Melrose Avenue
Admin Bldg., Room 116
Hollywood, California 90038-3197
Daniel_Ferleger@paramount.com

Dear Dan:

Over a year ago I wrote telling you of the Puzo Estate making a deal to publish another "Godfather" novel and enclosing a screenplay, part of which was to be used in the book.

When I didn't hear back, I assumed the studio wasn't interested in making a film based on the new book. In the hope that, with the passage of time, minds may have changed, I've asked that a copy of the book be sent to you.

If the studio is interested, please let me know.

Regards,


BERTRAM FIELDS *id*

BF/rjd
(dictated but not read)

cc: Anthony Puzo
Neil Olson