

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SHANNON'S RAINBOW LLC, a Utah
limited liability company; SHANNON'S
RAINBOW LLC, a Delaware limited liability
company; SHANNON'S RAINBOW
PRODUCTION, a Pennsylvania limited
liability company;

Plaintiffs,

vs.

SUPERNOVA MEDIA, INC., a New York
corporation; JOYCELYN ENGLE a/k/a
JOYCELYN DIPALMA, an individual;
JULIANNE MICHELLE, an individual; and
Does 1-100,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFFS'
MOTION TO TREAT
DEFENDANTS' MOTION TO
DISMISS AS A MOTION FOR
SUMMARY JUDGMENT AND FOR
ADDITIONAL TIME TO CONDUCT
DISCOVERY

Case No. 2:08-CV-880 TS

The Court has now before it Plaintiffs¹ Motion to treat Defendants' Motion to Dismiss as a Motion for Summary Judgment and For Additional Time to Conduct Discovery ("Plaintiffs' Motion").²

Plaintiffs are correct in asserting that matters outside the Complaint cannot be considered by the Court on a Fed.R.Civ.P. 12(b)(6) motion. In deciding a 12(b)(6) motion to dismiss, a court should only consider the complaint, its exhibits and "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."³

In opposition to Plaintiffs' Motion, Defendants point out that the only documents referred to in the 12(b)(6) motion to dismiss that are not included in the Complaint are two exhibits attached to Defendants' reply memorandum.⁴ Defendants argue that the two exhibits are not necessary to decide the merits of Defendants' 12(b)(6) motion and request the two exhibits be withdrawn. The Court finds Defendants' arguments well taken. Because these exhibits are not necessary to decide the merits of Defendants' 12(b)(6) motion, and in light of the fact that Defendants have voluntarily withdrawn the exhibits, the Court will deny Plaintiff's motion.

It is therefore

ORDERED that Plaintiffs' Motion (Docket No. 175) is DENIED.

¹ Shannon Rainbow, LLC, a Utah limited liability company, Shannon's Rainbow, LLC, a Delaware limited liability company, and Shannon's Rainbow Productions, a Pennsylvania limited liability company (collectively, "Plaintiffs").

²Docket No. 175.

³*Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (citing 5B WRIGHT & MILLER § 1357 (3d ed. 2004 and Supp. 2007)).

⁴See Docket No. 117.

DATED November 3, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "T. Stewart", is written over a horizontal line.

TED STEWART
United States District Judge