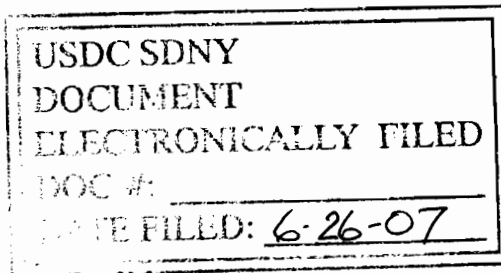


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ANTIDOTE INTERNATIONAL FILMS, INC. a :
New York corporation, :
 :
Plaintiff, :
 :
-v- :
 :
BLOOMSBURY PUBLISHING, PLC, a :
corporation, UNDERDOGS, INC., a :
corporation, LAURA ALBERT, a/k/a J.T. :
LEROY, an individual, and JUDI :
FARKAS, an individual, :
 :
Defendants. :
----- X

06 Civ. 6114 (JSR)

MEMORANDUM ORDER



JED S. RAKOFF, U.S.D.J.

Plaintiff Antidote International Films, Inc. ("Antidote") moves for sanctions against defendants Laura Albert and Underdogs, Inc. ("Underdogs"), alleging that they submitted false documents to the Court and lied at trial to cover up the fabrication.

In connection with summary judgment motion practice, defendants Laura Albert and Underdogs submitted (1) a document purporting to be Underdogs' corporate minutes dated February 1, 2001, (2) two separate documents purporting to be Underdogs' corporate minutes dated March 1, 2001, and (3) a document entitled "ASSIGNMENT," dated February 1, 2001, purporting to assign the rights in the literary works of "JEREMY LEROY" to Underdogs. See Declaration of Carolyn Albert, dated January 5, 2007, Exhibits B and C. Carolyn Albert, the mother of defendant Laura Albert and a sometime officer of Underdogs, swore to the authenticity of these documents. Id. ¶¶ 4-5. Defendant Laura Albert similarly swore that she signed the "ASSIGNMENT" document "in or around February 2001."

See Reply Declaration of Laura Albert, dated January 31, 2007, ¶¶ 2-3.

Also in connection with summary judgment motion practice, plaintiff submitted an exhibit containing an email dated February 4, 2006 from Carolyn Albert to an attorney, in which Carolyn Albert stated that Underdogs "must show in the minutes of its annual meeting (backdated, if necessary) that J.T. LeRoy is an authorized signatory for contracts." See Declaration II of Gregory Curtner dated January 24, 2007, Ex. A (emphasis added).¹

At oral argument on the parties' motions for summary judgment, the Court found that this email from Carolyn Albert raised questions about the authenticity of the corporate minutes and the assignment document submitted to the Court and ordered the parties to deliver the originals of these documents to Chambers for safekeeping, along with the originals of any other such similar documents. See transcript, February 12, 2007, at 39-40. The Court further requested that plaintiff inform the Court of whether plaintiff wished to submit the documents for forensic testing. Id. at 40.

The Court thereafter received from the parties original versions of two of the corporate minutes documents and the one assignment document referenced above, as well as the originals of

¹ In an Order dated February 21, 2001, the Court found that this email was not protected by either the attorney-client privilege or the attorney work product privilege. See Antidote Int'l Films, Inc. v. Bloomsbury Publ'g, PLC, --- F.R.D. ---, 2007 WL 1087272, at *3 (S.D.N.Y. 2007).

five additional corporate minutes documents and one additional assignment document. On plaintiff's request, the Court, on March 2, 2007, submitted all of these documents to Dr. Albert H. Lyter III, a forensic chemist retained by plaintiff. Dr. Lyter performed tests on the documents and then returned the documents to the Court.

On June 15, 2007, Dr. Lyter testified at the trial of this case as an expert with specialized knowledge. See Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999). In his testimony, Dr. Lyter stated, inter alia, that the corporate minutes documents and the assignment document that defendants had submitted in connection with summary judgment motion practice had likely been signed between 2005 and 2007, and not in 2001. Dr. Lyter further testified that at least some of the other corporate minutes documents submitted subsequent to the summary judgment motion practice had similarly been signed years after the dates appearing on their faces.

By contrast, defendant Laura Albert and Carolyn Albert both testified at trial that all of these documents had been signed on or about the dates appearing on their faces. The force of this testimony was diminished, however, not only by the substantial evidence pointing to fabrication -- including Carolyn Albert's email suggesting that the documents be backdated, trial testimony indicating that the assignment dated February 1, 2001 referred to events that only occurred thereafter, the suspicious nature of many of the documents on their faces, and Dr. Lyter's careful testimony -- but also by Laura Albert's repeated history of fabrication and by

Carolyn Albert's history of going to great lengths to assist her daughter's deceptive ventures.

Upon consideration, therefore, the Court concludes that it is more likely than not that Laura Albert and Carolyn Albert fabricated the documents defendants submitted in connection with summary judgment motion practice (as well as the additional documents that Dr. Lyter concluded were, in effect, backdated), and that both Laura Albert and Carolyn Albert testified falsely at trial regarding when these documents were signed.

In the context of these proceedings, in a case that fundamentally sounds in fraud, the materiality of these fabrications and falsehoods is plain. The more difficult question is what sanction is appropriate. Although plaintiff moved shortly before trial to have judgment granted in its favor as a sanction, the jury's verdict, which awarded plaintiff all the compensatory damages that plaintiff requested, rendered such a sanction moot (barring any reversal or modification on appeal). Alternatively, plaintiff seeks additional monetary sanctions going beyond the jury's award of \$116,500. However, in light of the defendants' seemingly limited resources and the fact that the Court is likely to award plaintiff recovery of substantial attorney's fees, adding still further monetary damages is likely to be a fruitless exercise.

The Court has also considered whether to refer to the U.S. Attorney's Office, for further investigation, the seeming perjury by Laura Albert and Carolyn Albert. However, the Court is of the view

that such a referral should be reserved for cases in which the Court is of the view that the perjury has been established beyond a reasonable doubt, for otherwise the threat of such referral would have a chilling effect on civil litigants who wish to testify in suspicious circumstances. This is not a case where the evidence is so strong that the Court can conclude beyond a reasonable doubt that Laura Albert and Carolyn Albert perjured themselves.

Thus, for all the foregoing reasons, the Court finds that no sanction is appropriate at this time. However, because sanctions would be appropriate in the absence of the jury's award, the Court will consider reopening this issue if there is any reversal or modification of the jury's award on appeal, and for that purpose, the Court will retain jurisdiction over this aspect of the case even after the final judgment in this case is entered.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
June 26, 2007