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Federal Judge Nixes Purported Distribution Deal for Acclaimed Film for Failure to Comply with Formalities

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A recent Federal case involving an alleged agreement for exclusive rights to distribute an acclaimed film stands as a stark reminder of the need to fully comply with the formal requirements for transferring and assuming copyright ownership interests. The suit was brought by The Weinstein Company, which sought to block the distribution of the film Precious, claiming that the producers had transferred the distribution rights to Weinstein Co. before they struck a distribution deal with Lions Gate Entertainment Corp. A federal judge in the Southern District of New York last month threw out the case, finding that the alleged agreement Weinstein Co. relied on did not meet the formal requirements to transfer the distribution rights to the film. In its complaints against Smokewood Entertainment Group (the producers of Precious) and Cinetic Media, Inc. (which negotiated with The Weinstein Company on behalf of Smokewood), Weinstein Co. stated that several of its executives met with Cinetic and Smokewood during the 2009 Sundance Film Festival. The complaint goes on to allege that on January 27, 2009, two days after Precious won three prestigious awards at the festival, Cinetic offered the distribution rights to Precious to Weinstein Co. provided that Weinstein Co. agree to several specific terms. Weinstein Co. claims that it promptly and "unequivocally" accepted the deal. Weinstein Co. also claims that Cinetic promised that it would provide the written licensing and distribution agreement detailing the terms of the deal. In an e-mail exchange with Cinetic regarding the delay the written agreement, Weinstein Co. indicated that it was "glad to confirm" the deal. In response, an executive with Cinetic neither confirmed nor denied the deal but said that he was "explaining every detail" to the producers. A few days later, on February 2, Smokewood and Cinetic announced an agreement with Lions Gate to distribute Precious. On February 4, 2009, Weinstein Co. filed three separate suits in New York: one against Lions Gate, one against Cinetic, and one against Smokewood for breach of contract, alleging that Weinstein Co. had obtained the exclusive right to distribute the film. (The Smokewood case was removed to Federal court on March 4.) Smokewood responded with a motion to dismiss for failure to state a claim. In response, Weinstein Co. filed an opposition to Smokewood's motion asserting, amongst other things, that Weinstein Co. had acquired an exclusive license to distribute the film through either oral negotiations with Cinetic or the January 27th e-mail exchange. In late September, District Judge Naomi Reice Buckwald ruled against Weinstein Co. Specifically with regard to the claim of an exclusive license to distribute based on an oral agreement, the court held to the traditional rule that a writing signed by the copyright holder is required to transfer ownership interests, including an exclusive agreement for distribution rights. The court also found the e-mail exchange, submitted by Weinstein Co. as evidence of an agreement, failed to meet the statutory requirements to transfer distribution rights. The court noted that the intention of the copyright owner to transfer ownership interests "must be clear and unequivocal" In this case, the court found that the friendly e-mail exchange did not endorse Weinstein Co.'s e-mail statements regarding confirmation of the deal and fell far short of the required unequivocal written intent to transfer. In an attempt to bolster its case, Weinstein Co. asserted that it is entertainment industry custom to negotiate distribution agreements orally then follow-up with a note confirming the agreement. But the court was unimpressed and remarked that "Congress did not exempt parties in the film industry from the requirements of the copyright act." It is also important to note that the court left open the possibility that an agreement involving a non-exclusive license to copyrighted material does not require a writing. However, the court indicated that an "implied non-exclusive license" can be found only in a circumstance where one party created a work at the request of another and then delivered the work to the requesting party with the intent that the requesting party copy and distribute the work. The court found that the facts alleged in this case did not warrant a finding of an implied non-exclusive license because Weinstein Co. clearly stated that negotiations for distribution rights began after Precious debuted at Sundance. The court's decision is consistent with many cases emphasizing the importance of protecting copyright interests through signed writings manifesting the clear intent of the copyright holder. While the decision in this case, like all others involving copyright disputes, was based on its specific–and perhaps unique–set of facts, the lesson to be drawn is still useful.

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