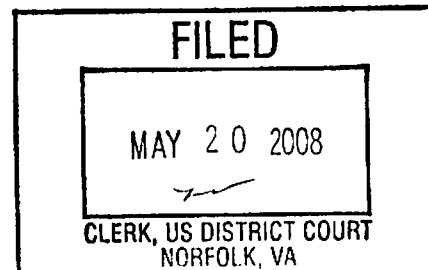


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CYNTHIA DONN TESSLER

Plaintiff,

Civil Action No.:

2:08cv234

NATIONAL BROADCASTING COMPANY, INC.

Serve: CT Corporation System
111 Eighth Avenue
New York, New York 10011

Defendants.

COMPLAINT

COMES NOW Plaintiff, Cynthia Donn Tessler, by counsel, and provides this, her Complaint, and in support thereof states as follows:

INTRODUCTION

1. This is an action in law and equity for copyright infringement under the Copyright Act of 1976, 17 U.S.C. § 101 et seq.

JURISDICTION AND VENUE

2. This is an action for copyright infringement under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., and an action for breach of contract. This Court has jurisdiction over the claims under 28 U.S.C. §1338(a) and pendant jurisdiction over the claims arising under state law pursuant to 28 U.S.C. §1338(b).

3. This Court has personal jurisdiction over National Broadcasting Company, Inc. pursuant to Virginia Code Ann. § 8.01-328.1, by virtue of the fact that, upon information and belief, it: (1) regularly solicits business in this state; and (2) has committed a tortious act within the state by committing acts of infringement and breach of contract in this state.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) and 1391(b) and (c), as the Defendant is a corporation subject to personal jurisdiction in this district and is therefore deemed to reside here for the purposes of venue.

PARTIES

5. Plaintiff Cynthia Donn Tessler ("Tessler") is an individual residing in the City of Norfolk, Virginia.
6. Defendant National Broadcasting Company, Inc. ("NBC") is a corporation with its principle place of business in New York, NY.

FACTS COMMON TO ALL COUNTS

7. Plaintiff Cynthia Donn Tessler ("Tessler") is a media producer who has experience in the creation and production of television and other media.
8. NBC Universal ("NBC") is a media and entertainment company that owns and operates numerous television networks, and, upon information and belief, has as its products (in part): NBC; Universal Studios; NBC Universal Television Group; NBC News; CNBC; MSNBC cable television; and MSNBC.com.

9. NBC provides, in part, news, topical, and "newsy"/informational programming through its various products.
10. In early 2001, Tessler began working on her programming for "Parenting Your Parent," a series intended to explore the issues related to caring for the elderly. In particular, PYP is a series intended to explore the issues related to adult children having to interact with and care for their aging parents.
11. Tessler filed for a copyright registration application for her television/video series, and was awarded a copyright registration number PAu002634041 on December 28, 2001. A copy of that registration is attached herein as Exhibit A.
12. From on or about August of 2002 through September of 2004, Tessler was engaged in discussions with NBC regarding NBC's use of her programming plan and materials.
13. The discussions between Tessler and NBC regarding PYP were understood to include material that was developed by and the sole proprietary property of Tessler.
14. Those discussions with NBC included, in part, active participation of numerous individuals who were either agents or employees of NBC, and whom had access to the materials belonging to Tessler.
15. The contract negotiations between Tessler and NBC were conducted through various means, including face to face meetings and via electronic and other documentary discussions, both within and outside of the Commonwealth of Virginia.
16. During the course of those discussions between Tessler and NBC, NBC was presented with the entirety of Tessler's materials, including those portions subject to the copyright registration PAu002634041.

17. NBC desired to use Tessler's copyrighted materials as part of future NBC programming, and promised Tessler remuneration in an amount not less than seven hundred and fifty thousand dollars (\$750,000.00) in return for NBC's rights to use the materials.
18. The collaboration as discussed with NBC did not come to fruition because a third party chose not to move forward with the project and NBC, as a result, told Tessler that NBC would not be using Tessler's copyrighted materials.
19. In 2007, NBC began airing a series titled "Trading Places" in conjunction with the NBC Nightly News, with the "Trading Places" series viewed in NBC programming, including programming within the Commonwealth of Virginia; the NBC Nightly News series directly copies, in whole or in part and without authorization, the original material of Ms. Tessler's program for "Parenting Your Parent."
20. Of those involved in the "Trading Places" series, at least two people directly involved in the production of the infringing work "Trading Places" were directly involved in the discussions and presentation of materials for "Parenting Your Parent": Dr. Nancy Snyderman (Chief Medical Editor, NBC News) and Lloyd Siegel (Vice President, NBC News Partnerships); those individuals had direct access to and copies of all materials related to Tessler's copyrighted works.
21. The series "Trading Places" has been presented as segments involving NBC's on-air talent, including but not limited to: Brian Williams, Timothy Russert, Ann Curry, Dr. Nancy Snyderman, and Tom Brokaw, among others.
22. Upon information and belief, one or more of the individuals presented as on-air talent in "Trading Places" knew of Tessler's copyrighted work prior to the copying that resulted in

the work “Trading Places.”

23. Upon information and belief, one or more of the individuals associated with and/or involved in the creation of “Trading Places” had in their possession, prior to the creation of “Trading Places,” Tessler’s copyrighted work.
24. The NBC series “Trading Places” is accompanied by material posted on a related website at MSNBC.com.
25. Despite notice by Tessler, NBC continues to infringe Tessler’s copyrights, unfairly profiting from such use and damaging Tessler.

COUNT I

COPYRIGHT INFRINGEMENT

26. Tessler repeats and re-alleges each and every allegation of paragraphs 1 through 25 as though fully set forth herein.
27. NBC’s acts as alleged constitute copyright infringement in violation of the Copyright Act of 1976, 17 U.S.C. § 101 et seq.
28. Upon information and belief, by such wrongful acts, NBC has and, unless restrained by the Court, will continue to cause serious irreparable injury and damage to Tessler.
29. Tessler has no adequate remedy at law.

COUNT II

BREACH OF CONTRACT

30. Tessler repeats and re-alleges each and every allegation of paragraphs 1 through 29 as

though fully set forth herein.

31. By and through the actions alleged above, NBC entered into a contract with Tessler; namely that NBC would use Tessler's proprietary and copyrighted material, and NBC would compensate Tessler for such use.
32. NBC has used Tessler's proprietary and copyrighted material, and has failed to compensate Tessler.
33. Tessler has been injured in an amount not less than \$750,000.00.

COUNT III

BREACH OF IMPLIED CONTRACT

34. Tessler repeats and re-alleges each and every allegation of paragraphs 1 through 33 as though fully set forth herein.
35. By and through the actions alleged above, NBC entered into a contract with Tessler; namely, that if NBC used Tessler's proprietary material, NBC would compensate Tessler.
36. NBC used Tessler's proprietary material.
37. NBC has not compensated Tessler, and Tessler has been damaged in amount not less than seven hundred fifty thousand dollars (\$750,000.00).

PRAYER FOR RELIEF

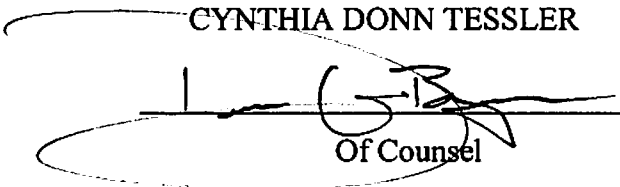
WHEREFORE, Plaintiff prays for an Order of the Court:

38. Granting a preliminary and permanent injunction restraining NBC, its officers, directors, principals, agents, servants, employees, successors and assigns, and all individuals acting

in concert or participation with it, from infringing Tessler's copyright.

39. Directing NBC to account to Tessler for any and all profits derived by NBC from the infringing works;
40. Awarding Plaintiff a monetary judgment against NBC for Tessler's damages and NBC's profits; although, at present, Tessler cannot ascertain the full extent of its damages and lost profits, it is believed that Tessler's damages and NBC's profits are in an amount not less than thirty million dollars (\$30,000,000.00);
41. Awarding Plaintiff its reasonable attorneys' fees, costs and disbursements incurred herein; and
42. Awarding Plaintiff such other and further relief as the Court may deem just and proper.
43. Plaintiff demands trial by jury.

CYNTHIA DONN TESSLER



Of Counsel

Duncan G. Byers, Esquire
Virginia Bar No. 48146
Duncan G. Byers, P.C.
142 W York Street, Suite 910
Norfolk, VA 23510
(757) 227-3340 Telephone
(757) 227-3341 Facsimile
Counsel for Defendant, Cynthia Donn Tessler