

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

10103249

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IRINA KRUPNIK,

Plaintiff,

Index No.

-against-

SUMMONS

NBC UNIVERSAL, INC., UNIVERSAL STUDIOS,
INC., UNIVERSAL PICTURES COMPANY, INC.,

Defendants.
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To the above-named Defendant(s):

YOU ARE HEREBY SUMMONED and required to serve upon THOMAS M. MULLANEY, ESQ., whose address is 275 Madison Avenue, New York, New York, 10016, an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.


Clerk of the Court

FILED
MAR 11 2010
COUNTY CLERK'S OFFICE
NEW YORK

Law Offices of Thomas M. Mullaney
275 Madison Avenue, 37th Floor
New York, New York 10016
(212) 223-0800
Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IRINA KRUPNIK,

Plaintiff,

-against-

NBC UNIVERSAL, INC., UNIVERSAL STUDIOS,
INC., UNIVERSAL PICTURES COMPANY, INC.,

Defendants.
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Index No.:

16103249

COMPLAINT

Plaintiff IRINA KRUPNIK ("Plaintiff" or "Ms. Krupnik"), by her attorney, Thomas M.

Mullaney, as and for her complaint, alleges as follows:

PARTIES

1. Plaintiff Irina Krupnik is an individual residing in the State of New York.
2. Defendants NBC Universal and Universal Studios are Delaware corporations.
3. Defendant Universal Pictures is a California corporation. On information or belief,

Universal Pictures is either a division or subsidiary of Universal Studios, which is either a division or subsidiary of NBC Universal. On information or belief, Universal Pictures is the entity or division that created and distributed the movie Couples Retreat.

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FACTS

4. Plaintiff brings this action to for damages against NBC Universal, Inc. (“NBC Universal”), Universal Studios, Inc. (“Universal Studios”), and Universal Pictures Company, Inc. (“Universal Pictures”) (collectively, “Defendants”) from their ongoing, unauthorized and defamatory use of her likeness in a derogatory and humiliating context in a major motion picture. Defendants’ unauthorized and defamatory use of Ms. Krupnik’s likeness has caused Ms. Krupnik deep embarrassment and ongoing damage to her reputation as a professional image consultant and makeup artist. Ms. Krupnik only learned of Defendants’ lascivious use of her photo in a film called Couples Retreat after the film was released to the theaters. That photo was taken nearly ten years ago for a modeling job when Ms. Krupnik, a native of the former Soviet Union, was just 21 years old. A decade later, it was used in an unintended sexual and degrading context in Defendants’ movie Couples Retreat.

5. Defendants released Couples Retreat to theaters for Columbus Day weekend in 2009. Despite receiving poor reviews, Couples Retreat set a record for the highest-grossing movie debut on Columbus Day weekend, with ticket sales grossing \$34.3 million. It generated \$109.2 million in its theatrical release.

6. Couples Retreat was recently released on video, and was the top-selling title on Blu-ray for the week ended February 14, 2010. It has grossed an estimated \$213 million in packaged sales revenue.

7. Ms. Krupnik has worked as an image consultant and makeup artist for the last seven (7) years. Through years of hard work, she has developing a personal and professional reputation for being stylish and sophisticated and has cultivated a refined and discerning clientele. She has successfully made her way in this country like many who emigrate here for a better life.

8. Almost 9 years ago, on or about February 15, 2001, Ms. Krupnik was employed in a

photo shoot in Atlantis, Bahamas, where she modeled tasteful swimwear in a beach setting. The photograph at issue in this case (“The Photograph”) was taken as part of that photo shoot, and is attached as Exhibit A. The photo is of Ms. Krupnik alone, and is devoid of any suggestive props or content. At the time of the photo shoot, Ms. Krupnik signed a release granting rights to the photographs from the shoot to Sunshine Media Corp., which was succeeded in interest by All Star Media LLC. The Photograph has since been available for commercial use through stock photo licensing companies.

9. Universal Pictures is in the business of creating and distributing filmed entertainment, including movies like Couples Retreat.

10. On or about October 8, 2008, Universal Pictures purchased a license to use The Photograph in the movie Couples Retreat from a stock image company called JupiterImages, which at that time managed the rights to The Photograph. JupiterImages advertised The Photograph under the name “Young woman in bikini on beach.”

11. On or about October 8, 2008, JupiterImages sent an invoice to Universal Pictures, for a license to use The Photograph, to its production studios and offices, located at 100 Universal City Plz, Universal City, CA 91608. On information and belief, Universal Pictures paid \$500 to use The Photograph. Ms. Krupnik was not informed of and had no knowledge of this transaction.

12. On information and belief, after purchasing a license to use The Photograph, Defendants altered The Photograph by inserting it into a fictitious resort brochure, so that The Photograph appeared as part of a fictitious advertisement for a beach resort. Defendants further modified the context of The Photograph using this fictitious brochure, and The Photograph, as a prop for an overweight, unhappily married male character to masturbate while his wife is in the washroom. Defendants changed the context and gravely distorted the overall character, nature and impact of The Photograph from a

commonplace swimwear ad to softcore pornography.

13. In that scene, the actor Jon Favreau, playing a character at least twice the age of Ms. Krupnik in the photo, waits until his wife leaves their hotel room before lifting his sleeveless T-shirt over his prominent belly. He then liberally lubricates himself while leering at the image of the youthful Ms. Krupnik on a beach, a scenario apparently intended to be humorous.

14. In the Couples Retreat masturbation scene, Ms. Krupnik is readily identifiable from her photograph. Indeed, Ms. Krupnik only learned that her image was being used in Couples Retreat for this or any purpose after clients and acquaintances who viewed the movie recognized her and notified her that her picture was being used in this tawdry and shocking context. Because they and other potential viewers logically assumed, and continued to assume, that Ms. Krupnik consented to the use of her photograph and image in this quasi-pornographic context, her personal and professional reputation has been maligned. Furthermore, her reputation is at risk of further irreparable harm as the viewing audience of Couples Retreat grows through future DVD, Blu-ray and other media format rentals that will result in widespread household, and indeed, global distribution.

15. Although Ms. Krupnik signed a boilerplate release to allow licensing and commercial use of her photograph, she did not contemplate, intend or consent to the use of her photograph or likeness in a quasi-pornographic context, specifically that her likeness would be degraded by being used as a prop for and in the context of an explicit, sexual act being performed by a purposefully unattractive male twice her age.

16. In fact, it is the very juxtaposition of the wholesome image of a healthy 21 year old woman on a beach, with Mr. Favreau's much older, desiccated and overweight character creeping around his darkened hotel room to pleasure himself, that is supposed to provide the humor. This juxtaposition, into a scene that would be a crime if Mr. Favreau attempted it on a New York City

subway, is not something that Ms. Krupnik could have anticipated or should be subjected to.

17. Ms. Krupnik did not consent – in advance or at any time – to the unanticipated, degrading and defamatory use of her photograph which Defendants have devised.

FIRST CAUSE OF ACTION
(Violation of Right of Privacy and Publicity)

18. Plaintiff incorporates by this reference each of the allegations contained in paragraphs 1 through 16 above as set forth in full.

19. Section 51 of the N.Y. Civil Rights Law provides a claim for an injunction and damages in favor of “any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without . . . written consent.”

20. Defendants have published Ms. Krupnik’s likeness in a vulgar context in Couples Retreat and thereby used Ms. Krupnik’s picture and likeness for advertising purposes or for the purposes of trade within New York State.

21. Defendants did not obtain written consent from Ms. Krupnik before using her picture and likeness in the manner that they were used.

22. As alleged above, Defendants’ acts constitute the use of Ms. Krupnik’s picture and likeness without her written consent for advertising purposes or purposes of trade in the State of New York and elsewhere in violation of Ms. Krupnik’s right of privacy and right to control her publicity pursuant to NY Civil Rights Law Section 51, as well as analogous provisions of the statutory and common laws of other states.

23. As a direct and proximate result of Defendants’ conduct alleged herein, Ms. Krupnik has suffered great humiliation, embarrassment, emotional distress, shame, mortification, and injury to her reputation and career, all to her general damage.

24. As a result of the foregoing, Plaintiff has suffered damages in an amount to be determined at trial.

25. Plaintiff is informed and believes and thereon alleges that Defendants willfully and knowingly engaged in the conduct hereinabove alleged with malice, fraud or oppression, and as such, Plaintiff is entitled to exemplary damages.

SECOND CAUSE OF ACTION
(Defamation)

26. Plaintiff incorporates by this reference each of the allegations contained in paragraphs 1 through 24 above as set forth in full.

27. Defendants published Ms. Krupnik's photograph and likeness in a degrading and vulgar context as a prop for a masturbation scene in a movie released in October 2009 with an audience of viewers well in the millions.

28. Ms. Krupnik is readily identifiable from the publication of her photograph and likeness in Couples Retreat.

29. Viewers of Couples Retreat included clients and acquaintances of Ms. Krupnik who readily identified her from her photograph and likeness in the movie.

30. Ms. Krupnik's clients and acquaintances, and other viewers, reasonably but falsely understood from the publication of Ms. Krupnik's photograph and likeness in Couples Retreat that Ms. Krupnik agreed to have her photograph and likeness used publicly as a prop for a masturbation scene, and that Ms. Krupnik is the type of person who would agree to having her photograph and likeness used publicly as an object for masturbation.

31. Ms. Krupnik did not consent to this use of her photograph and likeness as a prop for a masturbation scene.

32. Defendants knew the publications alleged herein would create a false and defamatory impression about Ms. Krupnik, or acted with reckless disregard for the truth of whether a false and defamatory impression would be created by its publication.

33. As a result of Defendants' use of The Photograph as a prop for a masturbation scene, Ms. Krupnik has suffered great humiliation, embarrassment, emotional distress, shame, mortification, and injury to her reputation and career, all to her general damage.

34. Defendants' conduct was a substantial factor in causing Ms. Krupnik's injury.

35. Plaintiff is informed and believes and thereon alleges that Defendant willfully engaged in the conduct hereinabove alleged with malice, fraud or oppression. Plaintiff is therefore entitled to an award of punitive damages against Defendant in a sum to be proven at trial.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

36. Plaintiff incorporates by this reference each of the allegations contained in paragraphs 1 through 34 above as set forth in full.

36. Defendants have been and will continue to be unjustly enriched as a result of their unauthorized use of Ms. Krupnik's photograph and likeness.

37. By the acts described above, Defendants have retained revenues to which they were not equitably or legally entitled, and were thereby unjustly enriched at Plaintiff's expense, in violation of the common law of the State of New York.

38. As a result of the foregoing, Plaintiff has suffered damages in an amount to be determined at trial.

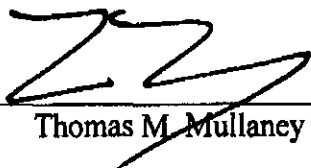
WHEREFORE, Plaintiff IRINA KRUPNIK respectfully demands judgment against defendants NBC UNIVERSAL, INC., UNIVERSAL STUDIOS, INC., UNIVERSAL PICTURES COMPANY,

INC., jointly and severally, as follows:

- A) compensatory damages in an amount to be determined at trial, but no less than \$10,000,000;
- B) incidental and punitive damages;
- C) costs, disbursements and attorney's fees incurred by Krupnik in connection with this action;
- D) a permanent injunction barring the Defendants, their agents, officers and employees, and those acting in concert with them from directly or indirectly interfering with Plaintiff's Civil Rights Law Section 51 rights by using her image in Couples Retreat without her written consent; and
- E) such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 11, 2010

LAW OFFICES OF THOMAS M. MULLANEY

By: 
Thomas M. Mullaney

275 Madison Avenue, 37th Floor
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Attorney for Plaintiff
Irina Krupnik