

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

DAMON DASH

Plaintiff,

-against-

Index No:

COMPLAINT

LEE DANIELS and LEE DANIELS ENTERTAINMENT LTD.

Defendants.

The Plaintiff, Damon Dash, by and through its attorneys, Turturro Law, P.C. and The Howard Law Firm, P.C., as and for his Complaint, alleges as follows:

The Parties

1. At all times referred to herein, the plaintiff, Damon Dash, was, at the time the Settlement Agreement (as that term is defined below) was entered into an individual residing in the County of New York and State of New York.
2. Upon information and belief, defendant Lee Daniels, was, and is, an individual residing in the County of New York and State of New York.
3. Upon information and belief, defendant Lee Daniels Entertainment Ltd. (“Lee Daniels Entertainment”), was, and is, a corporation duly created under and by virtue of the laws of the State of New York authorized to transact business in the State of New York.
4. Upon information and belief, defendant Lee Daniels Entertainment Ltd maintains its principal place of business at 434 Broadway, Suite 403 New York, New York, 10013.
5. Upon information and belief, Lee Daniels Entertainment is wholly owned and managed by Lee Daniels.

Factual Background

10. The plaintiff, Damon Dash (“Damon”), is a successful entrepreneur whose businesses included household names in the music industry (i.e., Roca-Fella Records), fashion industry (i.e., Rocawear) and art/film industries (i.e., Poppington Gallery and Dash Films), among others.

i. The Settlement Agreement

11. In sum and substance, in March 2015, after lengthy settlement negotiations, Plaintiff and Defendants entered into a confidential, global settlement of all claims related to the *Dash v. Daniels, et al.*¹ litigation, which was memorialized in writing and signed by all parties in April 2015. This writing, known among the parties as the Settlement Agreement and Mutual Release (the “Settlement Agreement”), resulted in the discontinuance with prejudice of the *Dash v.*

Daniels, et al. litigation.

12. Thus, after partially performing in relation to one component of the Settlement Agreement², the remaining material “creative considerations” owed by the Defendants’ were centered around Mr. Daniels - both individually and on behalf of his production company, Lee Daniels Entertainment – agreement to use commercially reasonable efforts to: (i) secure Damon a Co-Executive Producer credit (“Credit”) on the Richard Pryor Film Project (“Pryor Film”), and (ii) have the Credit appear in the same size, style and type of the credits provided in connection with other Co-Executive Producers of the Pryor Film; also, further consideration was to provide Damon with five percent (5%) of all amounts that Mr. Daniels actually receives from his back-

¹ The formal caption of that lawsuit was *Damon Dash v. Lee Daniels, et al.* and, it was pending under Index No.157989/2014 (Sup. Ct. N.Y. Cty.) until it was discontinued. Simone Sheffield and Canyon Entertainment, Ltd. were also named as parties to the lawsuit and parties to the Settlement Agreement (as that term is defined in this Complaint) though Plaintiff does not allege that they breached any portion of the Settlement Agreement to which they were bound.

² Though confidential, the terms of the Settlement Agreement did include a monetary component and other creative considerations in addition to the “EP consideration” (as that term is defined in this Complaint).

end participation (“Points” and, collectively with Credit, “EP consideration”) in the “Pryor Film.”³ Notably, the outstanding “Creative considerations” were presented by the defendant to entice Mr. Dash into quashing his meritorious suit.

13. Although Mr. Daniels did in fact become a writer, director and producer of the “Pryor Film” as per numerous industry publications, Defendants never informed Plaintiff of the film’s progress, or made any commercially reasonable efforts to obtain the EP consideration (including alternative, mutually-agreed upon, comparable consideration) that he was legally obligated to secure. Furthermore, it has been commonly reported amongst reputable sources that Mr. Daniels unilaterally departed from the “Pryor Film” ultimately ending the production.

ii. Material Default, Notice to Cure and Efforts to Mediate

13. Having failed to deliver the EP consideration, or comparable consideration in a mutually-agreed upon project as of August 1, 2016 (a more than reasonable time since the parties entered into the Settlement Agreement), Plaintiff, through his undersigned counsel on August 2, 2016, duly served proper written notice to cure (“Notice to Cure”) on counsel for Defendants.

14. The Notice to Cure outlined the basis for the breach, presented Defendants with agreed upon 10 days to cure the breach and, specifically stated that Plaintiff intended to sue if the breach remained uncured.

15. Thereafter, counsel for Defendants disputed the breach and engaged counsel for Plaintiffs in several back and forth efforts to mediate a resolution over the next two (2) years. These efforts consisted of various phone calls between the parties’ both litigation and personal business attorneys and formal written correspondence by email and letters.

³ The “Pryor Film” was to be a biopic about the life of the legendary comedian Richard Pryor. Upon information and belief, the film was to star Mike Epps, Oprah Winfrey, Eddie Murphy and, Kate Hudson; also, it was to be distributed by the Weinstein Company. Upon information and belief, an “EP Credit” on such a film with backend interest would be worth an estimated \$3,000,000 minimum investment.

16. The sum and substance of the initial correspondence was “be patient, we will get you that EP consideration we owe you.”

17. Nevertheless, in 2018, after it became readily apparent that Mr. Daniels was heavily involved in his various television projects⁴ and did not seem to be associated or affiliated with any “comparable” film projects of the caliber of the Pryor Film, Plaintiff made clear that further mediation was futile and the EP consideration was well past due and owing.

18. In response, Defendants, through their counsel, offered non-comparable alternative consideration and thinly-veiled threats. In essence, despite the express and unambiguous EP consideration clause, Defendants, in bad faith, to renegotiate the terms of this clause to something vastly more favorable to Defendants.

19. Accordingly, after failing to mediate to a resolution the material breach first identified in the Notice to Cure, the instant lawsuit was commenced.

AS AND FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

20. Plaintiff repeats and re-alleges paragraphs 1 through 19 as if fully repeated and set forth at length herein.

21. As noted above, Plaintiff and Defendant entered into the Settlement Agreement.

22. Additionally, at all times relevant herein, Lee was and officer and agent having the power and authority to contractually bind Lee Daniels Entertainment to legal obligations.

23. Pursuant to this power and authorization, as noted above, Defendants and Plaintiff entered into the written Settlement Agreement,

⁴ Since the commencement of the original suit, which brought rise to the instant settlement agreement, Defendant has produced and or directed two successful Fox Network Shows entitled “Empire” and “Star,” respectively.

24. A material term of the Settlement Agreement was for Defendants to deliver Damon an executive producer credit with back-end interest on a major motion film based on the life of Richard Pryor and, if unable to do so, then a comparable film.

25. Plaintiff performed all of his obligations pursuant to the terms of the Settlement Agreement.

26. Defendants Lee and Lee Daniels Entertainment have breached the Settlement Agreement by failing to deliver his remaining obligations under the settlement agreement, specifically, failing to deliver an executive producer credit with backend interest to Plaintiff.

27. As a result of the foregoing, Plaintiff is entitled to a judgment, declaring and adjudging that binding agreements exist between the parties, that Defendants Lee and Lee Daniels Entertainment are in breach thereof, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff compensatory damages in an amount to be determined at trial, but estimated at no less than Five Million Dollars (\$5,000,000.00) and issue any Producer credits to Plaintiff to which it may have heretofore been entitled as per the Settlement Agreement.

AS AND FOR A SECOND CAUSE OF ACTION
(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)

28. Plaintiff repeats and re-alleges paragraphs 1 through 27 as if fully repeated and set forth at length herein.

29. Despite acknowledging in writing that Plaintiff had fully performed as per the terms of the Agreement, instead of compensating Plaintiff as per those terms, Defendants Lee and Lee Daniels Entertainment sought, and still seek, to materially alter and mitigate their obligations under the Settlement Agreement through specious civil and/or threats of criminal prosecution.

30. These verbal threats were made by defendant Lee and/or through his agent in bad faith to try and renegotiate the consideration past due and owing to Plaintiff and, these actions constitute a breach of the duties of good faith and fair dealing implied in express contracts.

31. As a result of the foregoing, Plaintiff is entitled to a judgment, declaring and adjudging that binding agreements exist between the parties, that Defendants Lee and Lee Daniels Entertainment are in breach of the duties of good faith and fair dealing implied in said agreements, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff compensatory damages in amount to be determined at trial, but estimated at no less than Five Million Dollars (\$5,000,000.00) and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled.

AS AND FOR A THIRD CAUSE OF ACTION
(PROMISSORY ESTOPPEL)

32. Plaintiff repeats and re-alleges paragraphs 1 through 31 as if fully repeated and set forth at length herein.

33. Defendants Lee and Lee Daniels Entertainment made various promises, both orally, and in writing, to properly compensate Plaintiff for failing to deliver on the EP consideration that he promised Plaintiff.

34. In reliance on the above described promises Plaintiff released his claims in the *Dash v. Daniels, et al.* litigation.

35. In further reliance on the above described promises of monetary compensation, producer credits and ownership of Lee's Projects, Damon introduced Lee to both investors, and actors/actresses casted in Lee's films without which - several, if not all - of Lee's Projects would never have been produced or fully developed.

36. Thus, Lee and Lee Daniels Entertainment's promises of EP consideration were

intended to induce Plaintiff to forego taking legal action, and in its stead, receive alternate consideration.

37. Lee and Lee Daniels Entertainment's promises of delivering the EP consideration did induce Plaintiff to forego taking legal action for nearly three and one half years, and in its stead, patiently wait for receipt of its alternate comparable consideration-i.e., waiting to be added to a mutually-agreed upon Film Project with a proper EP credit and back-end monetary interest.

38. Plaintiff's reliance on Lee and Lee Daniels Entertainment's promises were reasonable.

39. Plaintiff's reliance on Lee and Lee Daniels Entertainment's promises were reasonable given the actions that Lee - individually, and through his attorneys/agents took, which confirmed the existence of said promises.

40. Plaintiff signed general releases in favor of the Defendants in reliance upon, there being both a guaranteed monetary and EP consideration component to the Settlement Agreement.

41. Defendants Lee and Lee Daniels Entertainment breached their promises to the Plaintiff under the Settlement Agreement.

42. As a result of the foregoing breaches, Plaintiff has been harmed.

43. Injustice can only be avoided by enforcement of the promises.

44. As a result of the foregoing, Plaintiff is entitled to a judgment, declaring and adjudging that a binding promise, or promises, exist(s) between the parties, that Defendants Lee and Lee Daniels Entertainment are in breach thereof, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff compensatory damages in amount to be determined at trial, but estimated at no less than Five Million Dollars (\$5,000,000.00) and issue any producer credits

and ownership rights to Plaintiff to which he may have heretofore been entitled.

AS AND FOR A FOURTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

45. Plaintiff repeats and re-alleges paragraphs 1 through 44 as if fully repeated and set forth at length herein.

46. Defendants Lee and Lee Daniels Entertainment were enriched by Plaintiff's release of a high-profile lawsuit while said Defendants withheld and continued to deprive Plaintiff of the past owed and due EP consideration, which are rightfully owed to Plaintiff.

47. Defendants' enrichment was made at the expense of Plaintiff who was led to believe that he was to receive its full bargained for considerations as set forth in the Settlement Agreement

48. Defendants Lee and Lee Daniels Entertainment knew of the benefits being conferred upon them by Plaintiff.

49. As a result of the foregoing, the circumstances are such that in equity and good conscience, restitution should be made to the Plaintiff.

50. As a result of the foregoing, Plaintiff is entitled to a judgment, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff monetary damages in amount to be determined at trial, but estimated at no less than Five Million Dollars (\$5,000,000.00), and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled.

AS AND FOR A FIFTH CAUSE OF ACTION
(FRAUD IN THE INDUCEMENT)

51. Plaintiff repeats and re-alleges paragraphs 1 through 50 as if fully repeated and set forth at length herein.

52. As alleged above, Defendants Lee Daniels and Lee Daniels Entertainment fraudulently induced Plaintiff into entering into the Settlement Agreement.

53. Defendants had no intention of ever completing the Pryor Film or any comparable film to deliver Plaintiff the executive producer credit and back-end interest.

54. Defendant assured Plaintiff that he would be directing said film, however, after casting and securing funding for the Pryor film, Defendant unilaterally walked away from the film as per several noted industry publications. Worse, Defendant failed to notify Plaintiff of his actions and instead blamed the termination of the film on third party actions.

55. Plaintiff justifiably relied on Defendant's assurances of receiving the EP credit on the Pryor Film, if not then a comparable film to be delivered in a reasonable time.

56. Plaintiff forfeited his right to seek damages against the Defendants in the underlying case under the guise of being compensated based on the assurance of the Defendants.

57. Plaintiff continues to suffer insurmountable damages every year he is without his owed working capital.

58. As a result of the foregoing, Plaintiff is entitled to a judgment, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff monetary damages in amount to be determined at trial, but estimated at no less than Five Million Dollars (\$5,000,000.00), and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled.

WHEREFORE, Plaintiff demands judgment as follows:

(i) on the first cause of action, for breach of contract, judgment, declaring and adjudging that binding agreements exist between the parties, that Defendants Lee and Lee Daniels Entertainment are in breach thereof, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff compensatory damages in an amount to be determined at trial

and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled;

(ii) on the second cause of action, for breach of the duties of good faith and fair dealing, judgment, declaring and adjudging that binding agreements exist between the parties, that Defendants Lee and Lee Daniels Entertainment are in breach of the duties of good faith and fair dealing implied in said agreements, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff compensatory damages in amount to be determined at trial and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled;

(iii) on the third cause of action, for promissory estoppel, judgment, declaring and adjudging that a binding promise, or promises, exist(s) between the parties, that Defendants Lee and Lee Daniels Entertainment are in breach thereof, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff compensatory damages in amount to be determined at trial and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled;

(iv) on the fourth cause of action, for unjust enrichment, judgment, directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff monetary damages in amount to be determined at trial and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled;

(v) on the fifth cause of action, for fraudulent inducement, declaring and adjudging that Defendants fraudulently induced Plaintiff into entering into the settlement agreement, as such Plaintiff justifiably relied on the representations made by Defendants to his detriment causing damages, further directing Defendants Lee and Lee Daniels Entertainment to pay to Plaintiff compensatory damages in amount to be determined at trial and issue any Producer credits and ownership rights to Plaintiff to which he may have heretofore been entitled;

- (vi) interest on all sums awarded to Plaintiff;
- (vii) costs and disbursement associated with this action along with reasonable attorney's fees; and,
- (viii) such other and further relief as this Honorable Court deems just, equitable and proper.

Dated: June 25, 2018
Brooklyn, New York

TURTURRO LAW, P.C.
By: /s/ Natraj S. Bhushan, Esq.
Natraj S. Bhushan, Esquire.

1602 McDonald Avenue
Brooklyn, NY 11230
Tel.: 718-384-2323

THE HOWARD LAW FIRM, P.C.
By: /s/ Eric Howard, Esq.
Eric Howard, Esquire.

244 5th Avenue, Suite C-137
New York, NY 10001
Tel: 646-820-5291