

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS (CHICAGO)

Chitunda Tillman,

Docket No. 05 -C -910

Plaintiff,

v.

Newline Cinema, et al. ,

Chicago, Illinois

Defendants

July 14, 2005

STATUS HEARING
BEFORE THE
HONORABLE MAGISTRATE JUDGE MORTON DELOW

APPEARANCES:

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

THE CLERK: 05 - C- 910, Tillman vs. Newline Cinema.

1 THE COURT: Okay, this is Judge Denlow, those
2 attorneys here in Chicago go ahead.

3 MALE VOICE: (Inaudible) here.

4 THE COURT: Go ahead and -

5 MALE VOICE: I can barely hear.

6 THE CLERK: Okay, can you hear us now?

7 MALE VOICE: Yes, I can. That's better.

8 THE COURT: Okay, the Attorneys here in Chicago, if
9 you'll introduce yourselves please.

10 MR. SHIN: Good morning, your Honor, Edward Shin on
11 behalf of Newline Cinema and the individual Newline defendants
12 and James Kearns.

13 THE COURT: Okay, go ahead and spell your last name
14 for the record.

15 MR. SHIN: S-h-i-n.

16 MS. BURGESS: Good morning, Judge, Laurie Burgess,
17 local counsel on behalf of the Writers Guild Defendants.
18 B-u-r-g-e-s-s.

19 MR. NIX: Good morning, your Honor, Brian Nix on
20 behalf of the plaintiff. The last name is spelled N as in
21 Nancy - i- x as in X-ray.

22 THE COURT: Okay now, who is participating by
23 telephone?

24 MR. FERBER: Good morning, your Honor, this is Tom

25 Ferber, F-e-r-b-e-r, of Pryor, Cashman, Sherman and Flynn in

1 New York on behalf of the same defendants as Mr. Shin. That
2 would be Newline Cinema, James Kearns, Robert Shaye, Michael
3 Lynn, Toby Emmerich, Camela Galano, and Jim Rosenthal.

4 THE COURT: Okay, anyone else participating by phone?

5 MR. SEGALL: Yes. Good morning, your Honor, from
6 California, Anthony Segall, S-e-g-a-l-l for the three Writers
7 Guild defendants, Writers Guild of America, Petrie and McLean.

8 THE COURT: Okay, anyone else?

9 MR. SEGALL: I think that's it.

10 THE COURT: Okay, so what's the status of the case?
11 Who wants to let me know? Mr. Nix, why don't you start?

12 MR. NIX: Okay.

13 THE COURT: And get as close the microphone as you
14 can so they can hear you.

15 MR. NIX: Okay. The status at this point is we were
16 originally supposed to be here also speaking on behalf of my
17 motion to leave and file a second amended complaint. I did not
18 provide them proper notice so I did an amended notice today and
19 motioned it up for the 27th. So at this point, you know, I had
20 agreed with the defendants from Newline that I would attempt to
21 strike the motion and notice it up properly.

22 THE COURT: Okay, well, what else is going on in the
23 case? What's being briefed? You have a motion to dismiss the
24 first amended complaint?

25 MR. NIX: They have submitted a motion to dismiss

12. (b) (6) and 12. (b) (2) for lack of personal jurisdiction. At
1 this point I was supposed to have 30 days to respond and at
2 this point I'm trying to amend my complaint for the second
3 amended complaint.

4 THE COURT: Okay, and what are you going to do in your
5 second amended complaint?'

6 MR. NIX: Well -

7 THE COURT: Are you going to correct all the defects
8 that they pointed out in your first amended complaint?

9 MR. NIX: Well, there were defects that were present
10 that I actually needed to do independent of their motions to
11 dismiss.

12 THE COURT: Okay. Okay, so somebody want to tell me
13 why he shouldn't be allowed to file a second amended
14 complaint and why Judge Nordberg has to deal with the first
15 amended complaint?

16 MR. FERBER: Yes, your Honor, this is Tom Ferber on
17 behalf of the Newline defendants. If I might, I think it would
18 be very helpful to the Court, your Honor, I want to give you
19 just a little background because I think these facts are
20 undisputed. This dispute all began by the sending of a claim
21 letter by previous counsel for the plaintiff named Jeffrey
22 Dillard, they're in Chicago, dated January 21st. He sent it to
23 Newline and executives there, claiming that the Newline film,
24
25

1 John Q, which was released in 2002, and which starred Denzell
2 Washington, that it infringed the copyright in the plaintiff's
3 script called Charisma Heart of Gold, for which he had written
4 and registered with the Copyright Office in 1998.

5 I corresponded personally with Mr. Dillard and after
6 a couple of rounds of correspondence in which I said I wanted
7 to look into his claims but could he give me some information
8 as to what his theory of access was by the writers of John Q,
9 and he said he didn't want to speculate. I said, well, can you
10 tell me who it was submitted to because then I'll do my own
11 investigation. He declined to do that.

12 I did my own investigation anyway and I found some-
13 thing rather extraordinary. I found with a very quick Lexis
14 Nexus search, that there was a November 1993 article published
15 in Daily Variety indicating that John Q., which concerns a
16 story of a man who takes a hospital emergency room hostage in
17 an act of desperation because his inability to pay for a heart
18 transplant for his ill son has forced them to take the son off
19 the donor list, the donee list, I should say. And so he
20 resorts to desperate measures.

21 And these articles going back to 1993 talk about the
22 fact that it had already been written by November 1993, five
23 years before the 1998 date of the plaintiff's script, and then
24 there are a string of articles (inaudible) in Daily Variety and
25 Hollywood Reporter, 1994 and later, as one studio didn't

1 exercise an option; it was sold to another studio and finally,
2 around 2000, it was picked up by Newline who did then sign Nick
3 Cassavetes to be the director and subsequently Denzell
4 Washington to star in the film.

5 I sent all this information to Mr. Dillard in a
6 letter dated February 8th of this year. On February 14th Mr.
7 Dillard wrote me back a letter. I will read you one sentence
8 from it. It says:

9 "In light of the compelling research presented by
10 your firm with respect to the above referenced matter, we
11 hereby withdraw our claim."

12 Without explanation Mr. Tillman, later that same day,
13 filed pro se, but nothing was heard about the action for some
14 10 weeks, which would take us to the end of April.

15 At that point Mr. Nix appears and files the first
16 amended complaint in which he blows up what frankly should have
17 just been a simple copyright infringement claim although for
18 the reasons I've just stated one which I think is probably
19 meritless and we can address on summary judgment later on, it's
20 a claim for all sorts of things, all sorts of conspiracies to
21 violate civil rights and intention infliction of emotional
22 distress and violation of an Illinois statute.

23 And interestingly, he brought in certain writers from
24 Variety as well, saying that they had participated in the
25 conspiracy and had back-dated articles, claiming that they had

1 not really been written at the time they purported to have
2 been written.

3 Oh, interestingly, by the way, this side note: He
4 didn't sue anyone from Hollywood Reporter, which also had one
5 of those articles.

6 As you may know, your Honor, there was a June 1st
7 conference with Judge Nordberg, and at that time there had
8 apparently already been a prior discussion between Michael
9 Rothstein, the attorney for the Variety defendants, and by the
10 way, I should note here that between May 8th and May 18th Mr.
11 Segall's firm, I and Mr. Rothstein all wrote letters to Mr. Nix
12 to make sure he was apprised of everything that had gone on.
13 He seemed to be because be attached (inaudible) to the
14 complaint as an exhibit my February 8th letter to Mr. Dillard,
15 the previous counsel and saying we regard the claim as
16 frivolous and advising him the position we would take about
17 the frivolous nature of it at the appropriate time with respect to
18 seeking sanctions and attorneys' fees.

19 At the June 1st conference, on consent of Mr. Nix,
20 the Variety defendants were dismissed and that, I guess,
21 dismissal with prejudice was so ordered by Judge Nordberg. We
22 also discussed the fact that the remaining defendants would be
23 making motionsto dismiss, and Judge Nordberg gave us a
24 briefing schedule.

25 That motion to dismiss was no surprise. It was

1 served pursuant to that briefing schedule on July 5th. We
2 moved indeed, as Mr. Nix noted, to dismiss against the
3 individual defendants we represent for lack of personal
4 jurisdiction and Newline, joined by the other defendants, made
5 a 12. (b) (6) motion to dismiss all non-copyright claims which I
6 think are all clearly legally insufficient on their face.

7 It's worth noting that Mr. Nix never responded to any
8 of the counsels' letters written between May 8th and May
9 18th and he never said a word to us before we were put to the rather
10 substantial expense of making these motions five weeks after
11 the initial conference on June 1st with Judge Nordberg.

12 Now that we've been put to this enormous expense, we
13 get a paper that can only be described as vague in the extreme,
14 which really offers nothing about the proposed amendment
15 other than the sentence:

16 "This amendment is to make corrections with the
17 intent to withdraw three counts and replace two or three in
18 the first amended complaint."

19 I don't know what he intends to do. If he intends to
20 withdraw everything but the copyright claim with prejudice,
21 he's welcome to do it and that would be consistent with our
22 motion, my client's rights are preserved with that respect.

23 If, in this vague statement of his intentions, he
24 intends to do more than that, I think it's unfair for him to
25 have waited all that time to make a correction after we've been

1 put to this expense. I think it (inaudible) just the flip side
2 of the motion we're making, we should have the opportunity to
3 oppose it on grounds of futility, and I would propose that if
4 that is his intention, to keep any non-copyright claims in the
5 case, that he offer that on the same briefing schedule that we
6 have our motion to dismiss and we'll oppose that as well on
7 grounds of futility, using briefs in large part that we've
8 already submitted.

9 THE COURT: Okay, well, you know, I think it's a good
10 suggestion and that is - I mean the suggestion I would follow
11 is to not let you just file a motion saying you intend to file
12 a second amended complaint, but that you attach your proposed
13 second amended complaint if that's what you intend to do, as
14 your response to their motion to dismiss and then they're in a
15 position to reply and say it's either futile or doesn't cure
16 the defects and at least the money they spent the first time
17 around isn't all lost. Does that seem to make more sense?

18 MR. NIX: Yes, Your Honor.

19 THE COURT: Okay

20 MR. FERBER: Your Honor, this is Tom Ferber again.
21 Could we then use the same briefing schedule that had been
22 set by Judge Nordberg?

23 THE COURT: Mr. Nix, when is your response due?

24 MR. NIX: I believe August 5th.

25 MR. FERBER: August 5th.

1 THE COURT: Okay, so I mean that's plenty of time for
2 you to prepare your proposed second amended complaint or your
3 response or whatever you want to file. But if you're response
4 is look, I've got a problem with my existing complaint, I
5 acknowledge the mistakes that have been made and I want to cure
6 those defects, and here's how I want to do that, do it that
7 way. If you think there's nothing wrong with certain counts of
8 your initial - first amended complaint that they're attacked
9 and you're going to preserve those, then file a memorandum
10 responding to them. But stay on the same briefing schedule

(Pause.)

11 Okay, I mean you know, Mr. Nix, I'm concerned for you
12 and your client about the possibility of Rule 11 in this situa-
13 tion and I would have preferred to have you respond to their
14 letters to help enlighten them as to what the basis is of your
15 client's claim. You know, because if you've been put on notice
16 that they may seek -

17 I assume you've put him on notice that if he doesn't
18 do something you're going to seek Rule 11 sanctions, is that
19 it?

20 MR. NIX: Yes.

21 MR. FERBER: Your Honor, we indicated sanctions under
22 Rule 11, under Section 1927 of Title 28.

23 THE COURT: Okay.

24 MR. FERBER: Under Section 505 of the Copyright Act,
25 and under the analogous section of the Civil Rights Act.

(Inaudible, multiple voices) -

1 THE COURT: Okay, but we have abolished the death
2 penalty here in federal court, so don't be seeking any relief
3 there.

4 MR. SEGALL: If I can add for the Writers Guild
5 defendants, the first amended complaint, the liability against
6 the Writers Guild defendants is really predicated on two just
7 outright factual misapprehensions, one, that the plaintiff was
8 a member of the Writers Guild, which he was not, and two, that
9 one of the defendants, the writer who got credit for John Q.,
10 was an employee of the Writers Guild, which he was not. We've
11 addressed those in Rule 11 letters to Mr. Nix (inaudible).

12 THE COURT: Okay, and Rule 11 -

13 MR. SEGALL: Or Mr. Nix.

14 THE COURT: Okay.

15 MR. SEGALL: We've got no response whatsoever. I
16 would just ask if there's going to be an amended pleading that
17 Mr. Nix ponder carefully what his obligations about factual
18 pleadings under Rule 11 are.

19 THE COURT: Okay. Well, plus you know, Rule 11 gives
20 you a safe harbor. You have a safe harbor for a period of time
21 where, if you correct things then sanctions aren't there, so -

22 MR. NIX: Right.

23 THE COURT: -- as long as you know and your client
24 knows going in what you're dealing with, you do what
25 you have to do.

MR. NIX: Okay.

1 THE COURT: Okay? Anything you want to tell me about
2 where you think the case stands, Mr. Nix?

3 MR. NIX: Well, to be honest, I mean there are
4 articles that exist. We do doubt the validity of the articles.
5 We doubt that a company would pass through several - That this
6 particular screenplay would pass through several companies
7 without ever requiring Mr. Kearns to copyright it, so there are
8 a couple factual problems that we have with the letters that
9 they've submitted. We don't hold them at its face and we
10 intend to argue that there was an infringement. But with
11 regard -

12 THE COURT: Well, but the real question that I asked
13 you is what was the basis under which Mr. Tillman made his,
14 what was it, a book? Or what did he write?

15 MR. NIX: It was a screenplay that he submitted.

16 THE COURT: Okay, who did he submit it to? I
17 mean -

18 MR. NIX: To the Writers Guild.

19 THE COURT: Okay.

20 MR. NIX: And at the time, while Writers Guild is
21 indicating that Mr. Kearns was never an employee, there has
22 been evidence stated by Mr. Kearns himself that (inaudible) was
23
24 a relationship to Writers Guild and we intend on exploring
25 that.

1 THE COURT: That's fine, as long as everybody is up
front about where it's going, I don't have a problem.

2 MR. FERBER: Your Honor, this is Mr. Ferber. I
3 wonder if I might just clear up an apparent misapprehension
4 here on two points, both WGA Filings and Copyright Office
5 filings. I don't know whether Mr. Nix knows this. I'm just
6 offering this as a fact. A screenplay and any other written
7 work is not required to be filed with the Copyright Office to
8 have copyright protection.

9 Copyright protection, of course, exists from the
10 moment it's set in a fixed form. The only thing that you need
11 to register for is, in most jurisdictions that would be is if
12 you intend to bring litigation based on it. And of course, it
13 was filed after it was finally picked up and actually acted
14 upon.

15 But therefore, the fact that there is some suspicion
16 there on the conspiracy theory that it wasn't filed with the
17 Copyright Office at the time it was written, that's a misappre-
18 hension of the significance of filing with the Copyright
19 Office.

20 Second, Mr. Kearns, of course, does do filings with
21 the WGA as do any number of writers. I'm sure he didn't say
22 anything else about - I don't know what Mr. Nix is vaguely
23
24
25

1 referring to about a relationship with the WGA. But in fact,
2 Mr. Kearns did file a draft of John Q. long before the 1998
3 creation date of plaintiff's screenplay. And if that would put
4 an end to this I'd be happy to offer - And in fact, Mr. Segall
5 may be able to help - records from the WGA that show that
6 filings were made. Now -

7 THE COURT: Well, here's what I'm going to do.
8 Here's what I'm going to do because have you exchanged any
9 Rule 26. (a) filings? 26. (a) (1) disclosures?

10 MR. NIX: No.

11 MR. FERBER: Not yet, your Honor.

12 THE COURT: Okay, I mean I think making the
13 26. (a) (1) disclosures would be helpful here. In other words,
14 you know, what is it the plaintiff is relying on in terms of
15 witnesses and documents and whatever, and what is it the
16 defendants are. So I'm going to require the parties to
17 exchange Rule 26. (a) (1) disclosures in 21 days. I think that
18 will get all the cards on the table.

19 MR. NIX: Your Honor, having said that, what effect
20 does that have on me being required to file something by August
21 5th if I don't have, you know, all the disclosures? Because it
22 would still build up costs and unnecessary expense if indeed
23 they do provide me with those documents because none of the
24 letters indicated what was just said.

25 THE COURT: Okay. Well, today's date is July 14th.
Okay, could you do it within two weeks rather than 21 days, the

1 Rule 26. (a) (1) disclosures? That would give it to him by
2 the 28th. How does that sound?

3 MR. FERBER: I can certainly offer everything I've
4 just referred to, your Honor.

5 THE COURT: I mean I think that would all be very
6 helpful. That would give Mr. Nix something to be able to talk
7 to his client about and review the situation and see where they
8 want to go with it, but I want to be sure they go into it with
9 their eyes open. I don't want anybody to have any misapprehensions
10 one way or the other, and if Mr. Nix has information from
11 his client that he feels he has to share with you, I want you
12 to have the benefit of that as well.

13 So Rule 26. (a) (1) disclosures within 14 days.
14 Otherwise the plaintiff's motion to file a second amended
15 complaint is withdrawn with leave to file that as the response
16 to the current motion to dismiss if he deems it appropriate.
17 Are we all on the same page?

18 So if, Mr. Nix, if you decide based on what you have
19 that instead of filing a response to the motion to dismiss you
20 want to propose a second amended complaint, that could stand as
21 your response as far as I'm concerned. And I want to be sure
22 he has as much information as possible beforehand so that he'll
23 do what he's obligated to do under Rule 11 and there won't be
24 any misapprehensions. Okay.

25 So let me continue the status for about 90 days.

THE CLERK: October 18th at 10:00

1 THE COURT: Okay, and by then everybody will have
2 everything briefed before Judge Nordberg and you'll see where
3 things stand and then we'll deal with it.

4 MR. NIX: Okay.

5 THE COURT: Okay? That cover everything here?

6 MR. NIX: Yes.

7 THE COURT: Anything in California needs to be
8 covered?

9 MR. SEGALL: I think that covers it, your Honor.

10 THE COURT: How about in New York?

11 MR. FERBER: I believe that covers it, your Honor, I
12 appreciate it.

13 THE COURT: Okay, 10-4

14 MR. SHIN: Actually, your Honor, there's one last
15 housekeeping detail. Edward Shin on behalf of the Newline
16 defendants. Prior to today's hearing Mr. Nix and the Newline
17 defendants had agreed to stay discovery until the resolution of
18 our pending motions. Obviously your Honor would like Rule 26.
19 (a) (1) disclosures and we're find to deal with that, but in
20 light of the uncertainty of the claims still pending, we'd like
21 the record to reflect the entry of a protective order or a
22 stay of discovery.

23 THE COURT: Who stayed the discovery the last time?

24
25 Did I do that? No. This is the first time you've been before

1 me. Well, I'm doing anything to modify Judge Nordberg's
2 order, so if there's a stay in effect there's a stay in effect.
3 Did you say you agree --

4 MR. SHIN: I didn't think that there was a stay
5 ordered by Judge Nordberg previously.

6 THE COURT: Oh, are you saying that by agreement
7 you're agreeing to stay?

8 MR. SHIN: Yes, we are, your Honor.

9 THE COURT: Okay. Well, you know, I'm not a fan of
10 staying discovery but I'll - Discovery is stayed pending the
11 next status either before me or Judge Nordberg.

12 MR. SHIN: Thank you very much, your Honor.

13 THE COURT: Then we'll address it at that time.

14 MR. NIX: Thank you, your Honor.

15 THE COURT: Okay. Very good, thank you.

16 (Hearing adjourned.)
17

18 I, Riki Schatell, certify that the foregoing in a
19 correct transcript from the record of proceedings in the
20 above-entitled matter.

21 _____

August 12, 2005

22 Riki Schatell

Date

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24
25 IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

1 CHITUNDA TILLMAN,) No. 05 C 910
 2 PLAINTIFF,) Chicago, Illinois
 3 v.) April 26, 2006
 4 NEWLINE CINEMA, et al.,) 2:50 p.m.
 5 Defendants,

6 TRANSCRIPT OF PROCEEDINGS P STATUS
 7 BEFORE THE HONORABLE JOHN A NORDBERG

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THE CLERK: 05 C 910, Tillman versus Newline Cinema;

status.

THE COURT: Just one second and I'll be with you
1 here.

2 (Pause.)

3 THE COURT: All right. This is up on a - we've had
4 some telephonic statuses on this. Do we have both sides?

5 Mr. Ferber (via telephone): Hello.

6 THE COURT: Yes. This is the United States District
7 Court now for the Northern District of Illinois and we are
8 calling for a status hearing in the case of Tillman versus
9 Newline Cinema.

10 And we have present now here to open court, if you'll
11 give your name.

12 MR. FERBER: This is Tom Ferber, New York. If you
13 give me a minute, I have to conference in Emma Leheny from
14 California.

15 THE COURT: Okay.

16 MR. FERBER: Let me do that. It will just take me a
17 few seconds.

18 THE COURT: We'll give you time.

19 And we have present now?

20 MR. SHIN: Edward Shin on behalf of Newline and the
21 other Newline individual defendants.

22 THE COURT: Okay you're here on behalf of?

23
24 MR. NIX: Plaintiff.

25 THE COURT: Mr. Tillman?

MR. NIX: Yes, Chitunda Tillman, yes, Your Honor.

1 MR. FERBER: Your Honor, this is Tom Ferber, and I've
2 conferenced in Emma Leheny.

3 Ms. Leheny (via telephone): Hello, Your Honor. This
4 is Emma Leheny on behalf of the Writers Guild.

5 THE COURT: All right.

6 Ms. Fawlicki: And, Your Honor -

7 THE COURT: Welcome to all

8 Now, where do we stand on how the case is proceeding
9 at this point?

10 Ms. Pawlicki: Your Honor, can I just enter my
11 appearance?

12 MR. FERBER: This is Mr. Ferber.

13 I think I can bring you up to date. I think I see
14 from, of course, the most recent development -

15 THE COURT: Hold on one second.

16 MR. FERBER: -- on March 31st to decide the various
17 motions to dismiss and issued an order and statement.

18 I see from the statement that you were, the Court was
19 familiar with the transcript of the July 14th, 2005 hearing
20 before Magistrate Judge Denlow, who had directed, among other
21 things, there was a lot of discussion during that, that when I
22 pointed out the history of the case, which if the Court has,
23
24 you know, will allow me, I'd like to give you some of the
25 background. But let me just sum this up by saying Magistrate

1 Denlow directed the parties, in light of the discussion of the
2 potential for Rule 11 sanctions and the evidence of independent
3 prior creation of the defendant's work, directed the parties to
4 exchange some Rule 26 disclosures in advance of the responsive
5 papers to the motions being filed by the plaintiff's counsel
6 saying that he wanted to make sure that, you know, they went
7 into it with their eyes open. He wanted the parties to each
8 know what the other had in terms of witnesses and documents,
9 and so that was his suggestion.

10 THE COURT: Did he set a -

11 MR. FERBER: We, the defendants, though the motion
12 picture Newline companies, who I represent, and the WGA, who
13 Ms. Leheny represents, produced, we did a written disclosure
14 describing the kind of documents and witnesses that would be
15 called upon in this case and produced something that apparently
16 plaintiff claimed not to have known about before the July 14th
17 conference with Magistrate Denlow, which is that in addition to
18 the 1993 and 1994 articles from the industry trade press, which
19 establish that John Q. the defendant's film, had already been
20 written and optioned five years before the plaintiff's script
21 was written in 1998, that in point of fact James Kearns, the
22 writer, the screenwriter for John Q, the defendants' film,
23 had actually registered his first two drafts with the Writers Guild
24 in 1993 and 1994, and the parties have produced both of those
25 registration certificates to plaintiffs' counsel, and as of

1 recently we have now also produced copies of the first two
2 revisions, versions of the draft that were submitted to the
3 Writers Guild therewith. I obtained that and produced those
4 to Mr. Nix.

5 THE COURT: All right. Now, if you'll hold on for a
6 second.

7 MR. FERBER: Sure.

8 THE COURT: We have one more attorney present here.
9 If you can just identify yourself for the record so counsel
10 can hear.

11 Ms.Pawlicki: I'm Elizabeth Pawlicki, local counsel
12 for the Writers Guild.

13 THE COURT: All right. So with this representation
14 now, do you have a date before Magistrate Judge Denlow where
15 you're to appear in the near future then?'

16 MR. SHIN: Yes.

17 MR. FERBER: Tomorrow morning, Your Honor.

18 THE COURT: Oh, tomorrow? Okay.

19 All right. And is this going to be a telephonic
20 conference again?

21 MR. SHIN: Yes, it will.

22 Mr. FERBER: I think it's the same arrangement as
23 this one. I will be appearing telephonically, and I think Miss
24 Leheny will too.

25 Ms. LEHENY; Yes, Your Honor.

1 THE COURT: All right. Well, it seems to me that
2 it's moving forward, and the best thing to do would be just to
3 conclude this proceeding by indicating that this is going to go
4 forward before Magistrate Judge Denlow, and we'll see how
5 matters work out with that.

6 MR. NIX: Well, Your Honor, if I may?

7 THE COURT: Yes, go ahead.

8 MR. NIX: I received your most recent decision on the
9 motion to dismiss, and as a result of that, I issued to the
10 defendants both on line through PACER as well as through
11 personal service, I issued a motion for reconsideration and a
12 brief memorandum in support of that.

13 And the reason I did that was because in your order,
14 you indicated that I did a second amended complaint without
15 authorization, or at least it was implicit, and you were using
16 the first amended complaint as the complaint of judgment or the
17 complaint that would rule in terms of the case going forward.
18 And so what I wanted to do was a least have you reconsider it.

19 Judge Denlow previously enabled me -- I attempted to
20 do a motion to amend for a second amended complaint. The
21 defendants felt as if for some reason that I should be unable
22 to produce or at least amend my complaint so that it would
23 appropriately represent the facts and the parties involved. As
24 a result of that, Judge Denlow enabled me to submit my second
25 amended complaint as my answer to the motions to dismiss, while

1 certainly I would have preferred having the second amended
2 complaint filed and having the opportunity to respond to their
3 motions to dismiss based on the evidence that I find to be
4 significantly inconsistent. While attorney Ferber has
5 indicated that there are trade articles that predate my
6 client's copyright, there are some inconsistencies that are
7 represented in there, and merely I was trying to get a second
8 amended complaint to be the complaint to be determined or to
move forward with.

9 THE COURT: All right. So where does that leave the
10 case so far as you're concerned now?

11 MR. NIX: Well, I did a motion for reconsideration
12 regarding your current order to dismiss certain individually
13 named as well as the Writers Guild as defendants, and there was
14 some -- so currently --

15 THE COURT: Has that been fully briefed?

16 MR. SHIN: Your Honor, if may?

17 Plaintiff has filed a motion to reconsider, but did
18 not properly notice up said motion for today's status. He
19 filed a notice of filing, and so we weren't on proper notice
20 for this motion today. It has not been briefed by the parties.
21 It's only been submitted by the plaintiff.

22 THE COURT: All right. How much time will you need
23
24 to respond to this motion for reconsideration?

25 MR. SHIN: I think we need 14 to 21 days.

Tom, did you have any thoughts on that:

1 MR. FERBER: That would be fine.

2 Ms. Leheny: That's fine.

3 THE COURT: Let's give you 21 days to respond.

4 And then how much for a reply?

5 MR. SHIN: 21 would also be fine.

6 THE COURT: All right, 21 for reply, and then we'll
7 rule by mail on that.

8 And in the meantime, you're going to be before
9 Magistrate Judge Denlow tomorrow, is that right?'

10 MR. NIX: Yes.

11 THE COURT: Telephonically in part, okay.

12 All right. So we'll see what develops there.

13 In the meantime, we'll rule on the reconsideration and
14 see how we go from there.

15 MR. NIX: Okay.

16 THE COURT: Thank you very much.

17 MR. SHIN: Thank you, Your Honor.

18 (End of proceedings.)

19 CERTIFICATE

20 I, Michael P. Snyder, do hereby certify that the
21 forgoing is a complete true, and accurate transcript of the
proceedings had in the above-entitled case before the Honorable
John A. Nordberg, at Chicago, Illinois, on April 26, 2006.

22 Official Court Reporter

23 Transcribed From Digital Recording
24 In The United States District Court
25 Northern District of Illinois
Eastern Division

1 Chitunda Tillman,) Docket No. 05 C 910
)
 2 Plaintiff,)
 v.) Chicago, Illinois
 3) September 27, 2006
 Newline Cinema, et al.,) 9:19 o'clock a.m.

4 Defendants,

5 Transcript of Proceedings - Motion
 6 Before The Honorable Morton Denlow

7 Appearances:

8 For the Plaintiff: Law Office of Brian Nix, by
 9 Mr. Brian Nix
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 10 Chicago, Illinois 60604

11 For the Defendants: Katz Friedman Eagle Eisenstein
 & Johnson, by
 12 Ms. Laurie Marie Burgess
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 13 20th Floor
 Chicago, Illinois 60602

14
 15 Rothner, Segall & Greenstone, by
 Ms. Jean Shin
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 16 Pasadena, California 91101
 17 (appearing via speaker-phone)

18 Alexandra Roth, CSR, RPR
 Official Court Reporter
 19 219 South Dearborn Street
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 20 Chicago, Illinois 60604
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21 Note: Please notify of correct speaker identification.
 22

23 Appearances: (Continued)

24 Pryor Cashman, by
 25 Ms. Stacey M. Faraci

410 Park Avenue
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(appearing via speaker-phone)

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1
2 (Proceedings had in open court :)

3 THE CLERK: 05 C 910, Tillman versus Newline.

4 THE COURT: Let's start with the attorneys who are in
5 court and have them introduce themselves. Spell your last
6 names for the record and tell me who you represent.

7 MS. BURGESS: Good morning, Judge. Laurie Burgess,
8 B-u-r-g-e-s-s. I'm local counsel on behalf of defendant
9 Writers Guild.

10 MR. NIX: Good morning, your Honor. Brian Nix. The
11 last name is spelled N-i-x. I'm attorney for plaintiff
12 Chitunda Tillman.

13 THE COURT: Okay. And who's on the phone?

14 Ms. Shin: Good morning, your Honor. This is Jean
15 Shin, S-h-i-n, on behalf the Writers Guild of America.

16 Ms. Faraci: Good morning, your Honor, this is Stacey
17 Faraci calling from Pryor Cashman in New York. Our local
18 counsel is unable to attend. We represent the Newline
19 defendants. And while we realize the motion is not to do with
20 us specifically, we thought we'd participate as an observer.

21 THE COURT: Go ahead and spell your last name for the
22 record.

23 Ms. Faraci: Sure. Faraci, F- as in Frank -a-r-a-c-i.

24 THE COURT: Okay. Mr. Nix, this is your motion. So
25 why don't you proceed.

MR. NIX: Yur Honor, this is our motion to compel

1 discovery or at least answers to interrogatories. At this
2 point - or as of April 27, you had indicated after the inquiry
3 from WGA that they were to respond to the extent that it would
4 help us proceed so we wouldn't have to subpoena. They are a
5 defendant to this action. There are basically three
6 defendants.

7 At this point we feel that the information that they
8 have does indicate some sort of collusion amongst the other
9 defendants to the extent that the information that they can
10 provide will be instrumental in our representation against all
11 parties. And so as a result of that, we think that it's
12 important that they provide us with the answers to the
13 interrogatories.

14 On the answers that - or the interrogatories that
15 were provided several months ago, they have indicated in
16 answering those interrogatories that they were not willing to
17 participate as a result they were no longer a dependent - I'm
18 sorry - they were not longer a defendant to this action based
19 on Nordberg's order of April 3, which is now still under
20 reconsideration, a motion for reconsideration.

21 THE COURT: Okay. Who wants to respond?

22 MS. BURGESS: Defendant -

23 Mr. Shin: Your Honor -

24 MS. BURGESS: The defendants did file a motion to
25 quash, and Jean Shin will be representing the Writers Guild in

1 arguing the motion to quash.

2 THE COURT: Okay. Go ahead, Mr. Shin.

3 Ms. Shin: As we stated in our papers in the motion to
4 quash, your Honor -

5 THE COURT: Speak up a little bit. Speak up.

6 Ms. Shin: I'm sorry. Your Honor, as we stated in our
7 papers, in our motion to quash, we've actually been dismissed
8 from this action by order of the Court on April 3. And so we
9 are no longer a defendant. And so Mr. Tillman is wrong in that
10 respect.

11 And for that reason, you know, we - we don't feel
12 that we have the obligation or even the ability to respond
13 fully to the interrogatories. We did respond because of your
14 order on April 27, 2006. We did make a response to those
15 interrogatories. But we objected for reasons that there is no
16 jurisdiction and because - and on the basis that we had in
17 fact been dismissed from the case. And we don't feel that any
18 further response to these interrogatories is necessary from us.

19 THE COURT: Well, I mean, if I recall, if I recall, I
20 think my concern was, you know, that you could be brought in
21 pursuant to subpoena and asked questions and have all that
22 discovery go against you. And because I believe there is a
23 motion to reconsider still pending, if I recall, I think I
24 suggested to please go ahead and respond to the discovery, that
25 I thought it would be easier just to do that than it would be

1 to start with the whole process of subpoenas and going through the
2 whole thing.

3 Ms. Shin: Your Honor, it I way respond to that, our
4 concern is that by responding to the discovery we are making
5 we would - we might be endangering our objections for personal
6 jurisdiction. And while the motion for reconsideration is on
7 file, it has not been granted. And until - until and unless
8 it is granted, we feel compelled to standby that order and to
9 follow it. And according to that order, we are not parties.
10 We are not - we are not required to respond to interrogatories
11 or any of the discovery.

12 Should Mr. Tillman serve us with proper subpoena, we
13 will respond to that. And we will - we will do everything
14 to comply with any proper papers that are given to us. But
15 these interrogatories are not proper, and we are not - and we
16 don't feel that we should have to respond to them or indeed
17 that we can.

18 MR. NIX: Your Honor, if I may?

19 THE COURT: Go ahead.

20 MR. NIX: It's actually our position that they will
21 be - you know while the motion for reconsideration is still
22 pending, the reality of it is is that, with all due respect to
23 Nordberg. I think he made an error in allowing them out based
24 on the fact that just the fact that our plaintiff submitted a
25 Payment to Writers Guild subjects them to the - to answer to

1 an Illinois resident that was harmed in Illinois.

2 And so based on that, I think that it's difficult for
3 us to proceed and continue with our discovery schedule that has
4 been set with Newline if we can't get the answers from WGA, who
5 theoretically is very important to the extent that we believe
6 that WGA was somehow linked to the copyright infringement. And
7 without them answering questions, they're basically keeping me in
8 abeyance while I wait for the reconsideration. Yet I'm
9 still required to continue on with the discovery with Newline.

10 And at this point, we would ask that either some sort
11 of extension be granted because I can't proceed with Newline
12 until I have the answers from WGA. And I think initially, that
13 was why you suggested that they should cooperate to the extent
14 of at least answering the questions that were posed.

15 I haven't served them with requests to admit or
16 production of documents. I have very specific questions that I
17 need answered. And while, yes, they did comply to the extent
18 that they submitted paperwork, certainly it was a blanket
19 answers. You know, everything that they were objecting -

20 THE COURT: Right. I mean, as far as I am concerned,
21 the response is really not a response. You know, you didn't
22 answer a single question. You just stood on your objections.
23 So, I mean, that really doesn't advance the ball, as far as I
24 am concerned.

25 MR. NIX: Right.

1 MS. BURGESS: Judge, I think it's a little hard to
2 hear Ms. Shin: Ms. Shin put it in her motion to quash that
3 according to the United States Supreme Court, we are bound by
4 the Judge's order dismissing us out as defendants until the
5 Judge - unless and until he reverses that. So I think --

6 THE COURT: I don't know that it's a final order while
7 it's still - while it's still pending.'

8 MR. NIX: I don't think so.

9 THE COURT: You know, if a motion to
10 reconsideration - to reconsider is out there, it's not a
11 final order. You still - as far as I am concerned, you know,
12 you're a part of the case. It's not a final order until a final
13 order has been entered.

14 MS. BURGESS: Judge, the case that Ms. Shin has cited
15 from the United States Supreme Court just generically refers to
16 all court orders being obeyed until modified or reversed by the
17 Court having authority do so. And I think my client is just
18 concerned that since we were specifically dismissed out on lack of
19 personal jurisdiction, that potentially be engaging in
20 discovery we may unwittingly undo what the Court has ordered as
21 a basis for the lack of jurisdiction - you know, one of the
22 bases for dismissing us out.

23 And I don't think it's that our client's unwilling to
24 respond to any subpoenas. I think really it's predominantly a
25 concern about the jurisdiction issue which -

1 THE COURT: I mean, I don't see that that's an issue.
2 In other words, if what's preventing you, then I'm sure the
3 plaintiff will agree that your response to the discovery will
4 not be relied upon by the plaintiff as a basis for establishing
5 jurisdiction if it didn't exist otherwise. Is that-

6 MR. NIX: I believe.

7 Mr. Burgess: I think the secondary issue Ms. Shin
8 could probably address more fully. But there is really quite a
9 bit that plaintiff has asked of defendants. So it's not a
10 situation where we're being asked to do cursory things.

11 It was my understanding when we were previously before
12 your Honor that if there were documents, et cetera, that were
13 being sought by our client, that we should simply in the
14 meantime produce them. But perhaps Ms. Shin could address it.

15 I think the interrogatories are actually fairly
16 extensive and requiring an awful lot of work and -

17 THE COURT: Did you submit a document request to them?

18 MR. NIX: No.

19 THE COURT: Okay. Why not?

20 MR. NIX: Well, primarily the -- you know, one of the
21 - one of their defense mechanisms that someone pre-wrote and
22 pre-submitted their copyright was a receipt. Based on the receipt,
23 I looked, you know, into the address. The address that they
24 submitted on top of the receipt. California doesn't have a
25 record of that business at that time.

1 So a lot of my questions really deal with pertinent
2 issues that fail to address the receipts and all of the other
3 documents that I don't believe could have existed back in '94
4 and so a lot of my questions initially are just dealing with
5 that.

6 I mean, certainly I can do a production of documents.
7 My first step was the interrogatories to just get an answer and
8 an understanding of why there were so many inconsistencies with
9 what they were provided. And they didn't comply to that. So
10 naturally I didn't send a production of documents.

11 In my order I do request that not only they provide
12 answers to the interrogatories, but they also, you know, comply
13 to subsequent discovery that I will be submitting.

14 Ms. Shin: Your Honor, that is true that -

15 THE COURT: Speak up a little bit, Ms. Shin. It's
16 hard to hear you.

17 Ms. Shin: I think what Mr. Nix says is true. But
18 that indicates another problem with these interrogatories. A
19 lot of them are so broad, they cast a net that includes
20 documents, asks for inspection of physical materials. And in a
21 lot of ways they are wholly improper.

22 The Guild separately objected on those grounds of the
23 interrogatories. But these are incredibly burdensome. They
24 are difficult to understand. They ask for documents. They ask for
25 inspection. They ask for materials that may or may not

1 exist. They ask for information going back 20 years. They ask
2 for information that honestly the Guild at this point does not
3 know exactly, you know - some of these are so vague and so
4 ambiguous and so broad that the Guild has a difficult time
5 understanding what is being asked in these interrogatories.

6 And, I mean, they would be very difficult and
7 burdensome for the Guild to respond to. An given that the
8 Guild is at this point not a party to this litigation, has been
9 dismissed from the case, it would just be, I think, too much of
10 a burden for the Guild just to respond pending the motion for
11 reconsideration.

12 MR. NIX: And, your Honor, while it's true that I did
13 inquire as to something that occurred 20 years ago, that's
14 because the only thing that they provided is one document that
15 was submitted by somebody back in '94. The only way that I can
16 actually understand how that document has an address on it
17 that, according to California government, didn't exist, I have
18 to go back 20 years. It's not an intention of mine to create
19 undue time and effort to answer questions dating back 20 years.

20 But the reality of it is is that I do need answers to
21 some questions. And the answers are all related to all the
22 defendants. So theoretically I can't really proceed with any
23 of the other defendants until -- because the only evidence
24 they're providing is the evidence from WGA.

25 THE COURT: Well, you may have to proceed with the

1 Other defendants. I mean, you have to proceed. I mean, it
2 Judge Nordberg says they are not in the case and they are not
3 going to be in the case, then what are you going to do?

4 MR. NIX: Well, then I would have to proceed. But I
5 would still be able to get the information so that I can
6 proceed properly. I mean, I submitted the information, the
7 interrogatories, three months ago.

8 And since then I read the objections. They objected
9 to there was more than 25 questions. Two weeks ago I submitted
10 a second set of interrogatories that were very clear, where
11 they wouldn't be able to say it was too broad, it was too
12 vague. They wouldn't be able to say that it exceeded 25
13 questions.

14 So at this point they do have they do have in their possession a
15 second set of interrogatories that they can answer, that fully
16 comply, and that aren't vague and aren't broad, or they feel
17 wouldn't - I mean, it's still going to date back 20 years.
18 Burt just the same, I've made the necessary adjustments.

19 THE COURT: Okay. Here is what I am going to suggest
20 to you. Go ahead and issue a subpoena to them. Go ahead and
21 issue a subpoena to them. We will have to see what Judge
22 Nordberg is going to do. See what Judge Nord berg is going
23 to do on your motion to reconsider.

24 You know, I agree that the interrogatories that you
25 have asked, there is too many in terms of form. And that there

1 are probably valid reasons for objection to a number of them
2 based on breadth and burdensomeness and things of that sort.

3 So, you know, at this point what I am going to do is
4 I'm going to deny your motion to compel. I'm going to permit
5 you to go ahead and proceed with a subpoena. And I'm going to
6 extend your discovery cutoff date until the end of the year so
7 that we will see what Judge Nordberg does. And then you can
8 have your time to figure out how you're going to proceed with
9 discovery.

10 Ms. Shin: Your Honor?

11 THE COURT: Yes.

12 Ms. Shin: May I just request some clarification? Mr.
13 Nix stated that he had just served the second set of 25
14 interrogatories. Am I to understand that we are also holding
15 off on responding to those?

16 THE COURT: Right. I mean, you don't have to file a
17 new - you do not have to file a new motion to quash those.

18 MR. SHIN: Okay. Thank you.

19 THE COURT: And - but go ahead and initiate through
20 the subpoena process. And then they'll have no basis for
21 objection whether they're a party or non-party. If it turns
22 out they are a party, then we'll deal with your
23 interrogatories.

24 Ms. Faraci: Your Honor, if I may, this is Stacey
25 Faraci from Pryor Cashman representing Newline defendants.

1 We had set an original cutoff date for discovery at
2 the end of August. Does this mean that discovery is now open
3 for everyone until the end of the year?

4 THE COURT: Yes, Yes.

5 Ms. Faraci: Okay.

6 THE COURT: Okay.

7 MS. BURGESS: Thank you, Judge.

8 THE COURT: So discovery, Donna, give me a date.

9 THE CLERK: 12/29.

10 THE COURT: 12/29.

11 Ms. Faraci: And again, is this limited to liability
12 only?

13 THE COURT: Yes.

14 Ms. Faraci: And it's limited to written discovery?

15 THE COURT: Well, until we see what Judge Nordberg
16 does with the case, see who's in and who's out. If Judge
17 Nordberg says - you know, once Judge Nordberg finally rules,
18 then you can proceed with all phases of discovery. The only
19 reason I am holding off is, you don't know who's in. You
20 don't know who's out. You don't know what's part of the case
21 and what's not part of the case.

22 Okay. And, Donna, set me a status in early December.

23 THE CLERK: December 12 at 10:00 o'clock.

24 MS. BURGESS: We are going to strike October 12?

25 THE COURT: Right. Okay, Very good. Thank you.

1 MS. BURGESS: Thank you, Judge.

2 MR. NIX: Thank you, your Honor.

3 Ms. Shin: Thank you, your Honor.

4 (Which were all the proceedings had at the hearing of the
5 within cause on the day and date hereof.)

6 Certificate

7 I hereby certify that the foregoing is a true, correct
8 and complete transcript of the proceedings had at the hearing
9 of the aforementioned cause on the day and date hereof.'

10
11 Official Court Reporter
12 U.S. District Court
13 Northern District of Illinois
14 Eastern Division

5-24-07

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Transcribed From Digital Recording

In The United States District Court'
Northern District of Illinois
Eastern Division

Chitunda Tillman,)Docket
Plaintiff,)
v.) Chicago, Illinois
) January 23, 2007
Newline Cinema, et al.,) 10:01 o'clock a.m.
Defendants,)

Transcript of Proceedings - Status
Before The Honorable Morton Denlow

Appearances:

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Note: Please notify of correct speaker identification.

United States District Court
Northern District of Illinois (Chicago)

1
2
3 Chitunda Tillman,)
4 Plaintiff,) Docket: No. 05 -C - 910
5 v.)
6 Newline Cinema, et al.,) Chicago, Illinois
7 Defendants) January23, 2007

8
9 Status Hearing
10 Before The
11 Honorable Magistrate Judge Morton Denlow

12 APPEARANCES:

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

THE CLERK: 05 - C - 910, Tillman vs. Newline.

1 THE COURT: Okay, good morning. Let's start with the
2 attorneys here in Chicago. Go ahead and identify yourselves.
3 State your full name, spell your last name, tell me who you
4 represent.

5 MR. SHIN: Good morning, your Honor, Edward Shin,
6 S-h-i-n, on behalf of the Newline Cinema.

7 MR. NIX: Good morning, your Honor, Brian Nix on
8 behalf of Chitunda Tillman, plaintiff.

9 THE COURT: Go ahead and spell your last name.

10 MR. NIX: Oh, I'm sorry. N as in Nancy, i- x as in
11 X-ray.

12 MR. FERBER: Good morning, your Honor, this is Tom
13 Ferber, F-e-r-b-e-r, and Stacey Faraci, F-a-r-a-c-I, of Pryor
14 Cashman in New York, also counsel for Newline Cinema.

15 THE COURT: Well, you haven't been in front of me for
16 awhile and I see that Judge Nordberg has denied the motion for
17 reconsideration, so what's left of the case?

18 MR. NIX: Well, at this point, your Honor, --

19 THE COURT: Get closer to the microphone just so -

20 MR. NIX: At this point, your Honor, there are a
21 couple of issues that I think are still pending. Back in July
22 2005 you authorized me the ability to file a second amended
23 complaint. Based on the order of two weeks ago basically
24 Nordberg found me in error in following your order and filing
25

1 my second amended complaint. He's still acting as if my first
2 amended complaint is the complaint of record, so at this point,
3 you know, through Rule 15.(a) we're seeking to eventually
4 file our second amended complaint as you allowed us to do
back in July of 2005.

5 THE COURT: Well, I think Judge Nordberg has spoken
6 to the issue and if you disagree with Judge Nordberg, then you
7 go back to Judge Nordberg. I'm not going to undo something
8 that Judge Nordberg has already dealt with.

9 MR. NIX: Well, actually what Judge Nordberg dealt
10 with was the ability for us to proceed and for him to
11 reconsider submitting a second amended complaint.

12 THE COURT: Well -

13 MR. NIX: And what he indicated was that I implicitly
14 filed a second amended complaint when your July 14th order
15 specifically indicates that I didn't file it implicitly, I was
16 given authorization, and I think it's unfair for the Court to
17 identify my inability to follow a Magistrate's order by filing
18 my second amended complaint.

19 THE COURT: Well, if you have a problem with
20 something that Judge Nordberg did you go to Judge Nordberg or
21 you go to the Seventh Circuit, you don't come to me. So you
22 can choose, do you want to go back to Judge Nordberg and deal
23 with the issue or do you want to go to the Seventh Circuit?
24 I'm not going to undo Judge Nordberg's order.
25

1 MR. SHIN: Well, your Honor, today we're here on a
2 status on written discovery, and if I may provide a brief
3 background of the case, this case involves plaintiff's claim
4 that Newline Cinema's production of the film, "John Q."
5 starring Denzel Washington infringed on the copyrighted
6 transcript for the screenplay, "Charisma, Heart of Gold," which was
7 filed with the Writers Guild in 1998. Newline asserts in
8 response that there's overwhelming evidence showing the
9 independent prior creation of the "John Q." screenplay since
10 1993, and that the two works are entirely dissimilar.'

11 Now with respect to the exchange of documents, even
12 before written discovery commenced we provided plaintiff with
13 several documents showing the independent prior creation of the
14 "John Q." screenplay, including a July 1993 first draft filing
15 registration with the WGA, and articles in the Daily Variety
16 and Hollywood Reporter in November of 1993 and October of 1994.

17 Now in light of this, plaintiff's claim that instead
18 of taking these documents at face value, plaintiff claims that
19 we're engaged in some sort of conspiracy with these two
20 publications, but the speciousness of these claims is readily
21 apparent since Hollywood Reporter was never added as a
22 defendant and because Variety was dropped as a defendant.

23 Now with respect to the written discovery that has
24 been exchanged in this case, Newline and plaintiff have served one
25 each other two sets of written interrogatories and a set of

1 requests for the production of documents. Now during this
2 phase of written discovery and following a comprehensive search
3 by Newline Cinema for responsive documents, we have produced
4 several documents showing and dating back to 1993 the sale of
5 the "John Q." screenplay to Island World Production, as well as
6 Island World Production's waiver in 1994 allowing Columbia
7 Pictures to produce that film.

8 Plaintiff, however, has filed to produce a single
9 piece of evidence that contradicts this overwhelming proof of
10 independent prior creation.

11 Now in approximately 10 days we plan on filing a
12 motion for summary judgment and that concludes our status.

13 THE COURT: Yes, file that with Judge Nordberg.

14 MR. SHIN: Yes, you Honor.

15 THE COURT: What do you want to tell me, Mr. Nix?

16 MR. NIX: Well, with regard to the discovery aspects,
17 so we've exchanged discovery. Newline has only provided
18 blanket responses. The first set of interrogatories only
19 indicated that they were unable to answer the questions on the
20 basis of the questions were vague and incomprehensible.

21 Their second set of interrogatories, when basically
22 streamlined the questions to avoid any confusion with the
23 questions, their responses to those interrogatories stated that
24 the interrogatories has been previously answered in the first
25 set of interrogatories. At this point -

1 THE COURT: Well, did you engage in a 37, -- I mean
2 you know, if you have a problem with their answers engage in
3 a 37. (2), bring a motion, and we'll deal with it.'

4 MR. SHIN: Your Honor, there's been no discussion
5 from plaintiff for months on this issue. As far as we're
6 concerned the sufficiency of our answers and the documents we
7 produced were sufficient, and so we object at this point to any
8 belated argument over discovery at this time.

9 MR. NIX: Well, while I admit it's been several
10 months, your Honor, the issue has been waiting on Nordberg.
11 That order was filed April 12th. We just got a response two
12 weeks ago, so it was difficult to proceed accordingly when I
13 didn't know who the defendants were going to be, I didn't know
14 what the motion on reconsideration was going to consist of.

15 Yes, they provided documents. They claimed the
16 Hollywood Reporter articles and the Variety articles, both of
17 which, if you go to a local library and you pull on the file, the
18 articles that they submitted weren't in the articles and I have
19 copies and I provided proof of them, of the actual articles on
20 the same date of the magazine. I provided the entire
21 magazines, and there nothing - and the articles that they
22 provided weren't located on the page numbers according to the
23 actual articles that I printed.

24 THE COURT: How much time do you need to complete the
25 discovery?

MR. FERBER: Well, your Honor, this is Mr. Ferber.
1 May I say something?

2 THE COURT: Go ahead, Mr. Ferber.

3 MR. FERBER: A couple of things. First, that last
4 comment, I actually don't know what Mr. Nix is talking about.
5 He certainly has never produced to me copies of the papers from
6 which the articles we've submitted have been excerpts and I've
7 never seen anything close to an adequate explanation for why he
8 disputes their authenticity.

9 More importantly, though, I want to state that you
10 had originally set written discovery and (inaudible) to end
11 at last September and then, when there was a bit of a dispute
12 between the plaintiff's counsel and WGA's counsel you extended
13 it to the end of December and you said he could serve by
14 subpoena on the WJ, which I don't think happened.

15 But with respect to New Line there has never been any
16 second set of written discovery. We responded to the first
17 set. Not only have there not been any pre-motion good faith
18 conference instituted by Mr. Nix, there never was any second
19 set of follow-up, that's simply misleading and incorrect.

20 I'm confident that our response on those addressed to
21 James Kearns, who is in fact no longer a defendant and had
22 already been dismissed from the case by Judge Nordberg. I'm
23 confident that we correctly responded that Mr. Nix's second set
24 of interrogatories were unbelievably duplicative of the first
25

1 and was really just a waste of time. We said we've already
2 answered these questions and showed him where, and nor has he
3 ever raised any good-faith dispute about that since we
4 interposed those responses several months ago.

5 That's all I wanted to point out.

6 THE COURT: Okay. Well, what are you planning to do
7 with the case at this point, Mr. Nix?

8 MR. NIX: Well, at this point -

9 THE COURT: They're going to be filing a motion for
10 summary judgment, they're indicated.

11 MR. NIX: Right, and I think a summary judgment
12 motion will be premature considering we haven't gotten anywhere
13 as far as the discovery is concerned. The original discovery
14 was limited to liability at this point. There are still
15 defendants. The discovery should be opened up completely.
16 There's been nothing provided by them to contradict anything.
17 They indicated that they submitted something through WGA which
18 was 1993 first draft, but they were codefendants, and the
19 reality of it is that they provided no documents linking any
20 sort of copyrights.

21 The status and the ability for us to prove that they
22 stole my client's work is that this copyright predated it.
23 There were over a hundred similarities. And the person, James
24 Kearnss, who we are alleging stole the copyright was an
25 individual who has copywritten between 10 and 12 things dating

1 back to the 1980s. There would have been no reason for him not
2 to protect a copyright while it's being sold to four or five
3 different companies and fail to copyright something which he
4 freely has copywritten.

5 THE COURT: Well, is -

6 MR. NIX: On the actual copyright date, it indicates
7 that this script was created in 2-002. I'm not really sure what
8 they're arguing. They submitted a document from WGA indicating a
9 first draft in 1993. But by James Kearns' own admission he
10 didn't create the copyright or the screenplay until 2002. It's
11 on his copyright. It's listed and that's evidence that it's
12 been stolen.

13 THE COURT: Who is still in the case?

14 MR. NIX: Newline is still in the case and I'm going
15 to have to go to some sort of appellate level to understand why
16 I was - why 'm being penalized for following your order.
17 Your indicated for me to file a second amended complaint.
18 Judge Nordberg indicated that I was mistaken for following your
19 instructions.

20 THE COURT: Well then, you have to do what you have
21 to do, okay? But in the meantime is Newline the only
22 defendant still in the case?

23 MR. SHIN: No, your Honor, Time Warner is also a
24 defendant in this case as well.

25 THE COURT: So there's two defendants left?

1 MR. SHIN: There are two defendants left, your Honor,
2 and I believe that any discussion of further discovery that
3 needs to be taken in this case should be considered after
4 plaintiff has had an opportunity to review our motion for
5 summary judgment. We can't go into specifics of the motion for
6 summary judgment at this time. However, we believe that the
7 documents produced and the arguments that will be contained
8 in that motion for summary judgment do not require any further
9 discovery.

10 THE COURT: Well, do what you have to do. I'll see you in 90
11 days. We'll find out what's going on.

12 MR. FERBER: Thank you, your Honor.

13 MR. SHIN: Thank you, your Honor.

14 THE COURT: Hang on, let me give you a date.

15 THE CLERK: April 26th at 10:00.

16 THE COURT: Very good.

17 MR. NIX: Thank you, you Honor.

18 (Hearing adjourned.)
19

20 I, Riki Schatell, certify that the foregoing is a
21 correct transcript from the record of proceedings in the
22 above-entitled matter.

23 _____
24 Riki Schatell

25 _____
June 4, 2007

In The United States District Court
Northern District of Illinois
Eastern Division

1
2
3 Chitunda Tillman,) Docket No 05 C 910
4 Plaintiff,)
5 vs.) Chicago, Illinois
6 Newline Cinema and its officers,) May 3, 2007
7 et al .,) 2:30 o'clock p.m.
8 Defendants,)

9
10
11 Transcript of Proceeding - Motion Hearing
12 Before The Honorable John A. Nordberg

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Appearances

For the Plaintiff: Law Office of Brian Nix
By: Mr. Brian Nix
220 South State Street
Suite 822
Chicago, Illinois 60604

For the Defendants: Greenberg, Traurig, LLP
By: Mr. Edward M. Shin
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601

(Appeared telephonically:)

Pryor Cashman, LLP
By: Mr. Tom J. Ferber and
Ms. Stacey M. Faraci
410 Park Avenue
New York, New York 10022

Laura Lacien, CSR, RMR
Official Court Reporter
219 South Dearborn Street, Suite 1902
Chicago, Illinois 60604
(312) 408-5032

(The following proceedings were had in open court:)

THE CLERK: 05 C 910, Tillman versus Newline Cinema.

1 THE COURT: All right. Good afternoon.

2 MR. SHIN: Good afternoon, your Honor. Edward Shin
3 on behalf of Newline and Time Warner.

4 THE COURT: All right.

5 MR. SHIN: We will be having a telephonic appearance by New
6 York counsel as well.

7 THE COURT: All right. Fine.

8 MR. NIX: Good afternoon.

9 THE COURT: And his name is?

10 MR. SHIN: Tom Ferber and Stacey Faraci.

11 THE CLERK: Hi. This is Terry Perdue from Judge
12 Nordberg's courtroom for Tom Ferber.

13 MR. NIX: And good morning - or good afternoon.

14 THE CLERK: Terry Perdue, Nordberg's courtroom, yes,
15 for Tom Ferber.

16 Okay. Hello. Can you hear me?

17 MR. FERBER: Yes.

18 THE CLERK: Okay. Please introduce yourself.

19 MR. FERBER: This is Tom Ferber and Stacey Feraci at
20 Pryor Cashman in New York.

21 THE COURT: All right. And this is Judge Nordberg
22 in the Northern District of Illinois calling the case of
23 Tillman versus Newline Cinema and we have Edward Shin also
24 present here in open court and I believe we have Brian Nix -
25

Is that correct?

1 MR. NIX: It is, your Honor.

2 THE COURT: -- present on behalf of the plaintiff.

3 Where do we stand on this now?

4 MR. SHIN: Your Honor, the last time we were here,
5 we were here for presentment of defendant's motion for
6 summary judgment. At that time, we informed the Court that
7 the plaintiff's counsel had received an actual copy of a 1994
8 article, popular media article that pre-dated plaintiff's
9 screenplay by four years and showed an independent proof of
10 prior creation.

11 Your Honor, at that time you entered and continued
12 our motion for summary judgment to give plaintiff and his
13 counsel time to consider whether or not they wanted to oppose
14 that motion and to continue with the litigation.

15 Apparently, I just received electronic notification
16 today of counsel for plaintiff's motion to withdraw. In
17 Paragraph 2 of the motion, counsel for plaintiff states that
18 there's new information that was recently discovered that
19 makes successful representation more challenging in this
20 matter.

21 Your Honor, first and foremost, I would contest that
22 the information that was provided was new. We provided three
23 Rule 11 letters dated May 2005 and two April 2006 which
24
25 contained all the articles that plaintiff counsel now

1 relies on in support of his motion to withdraw. An at this
2 point, your Honor, whether or not, you know, your Honor is
3 going to grant this motion to withdraw obviously is up to
4 your discretion but at this point we would still request and
5 state for the record that plaintiff's counsel be still
6 subject to sanctions pursuant to Rule 11 and Section 505 of
7 the Copyright Act.

8 THE COURT: All right. And your response to that
9 now?

10 MR. NIX: Yes, We actually received two sets of
11 articles that actually would have pre-dated my client's
12 copyright. At the time our issue was that we were unable to
13 locate them both on the respective websites and in numerous
14 libraries and other places where we checked to - or to
15 really question the validity of these articles. I actually
16 went out to DeKalb, Illinois. I was able to locate the
17 actual article.

18 THE COURT: Well, if we're going to have a hearing
19 on this -- we'll have an evidentiary hearing later on. The
20 main thing is, have you withdrawn from this case?

21 MR. NIX: Today I filed a motion to withdraw. I had
22 discussions with my client. He feels that there still is
23 enough evidence to overcome a summary judgment motion. There
24 are some issues that I'm not really willing to go forward on
25

1 the matter in light of the evidence that I was able to
2 locate.

3 THE COURT: So you're seeking to withdraw from the
4 case at this time?

5 MR. NIX: I am and consequently not part of the -

6 THE COURT: It's noticed up for what date now?

7 MR. NIX: Well, I didn't notice it up because I
8 needed leave to be able to file it so today I merely filed
9 it. I could do a notice of motion depending on how your
10 Honor wants to proceed.

11 Last week, you had indicated that I spend this week
12 determining how I wanted to proceed in terms of both --

13 THE COURT: Right.

14 MR. NIX: -- the petition for leave to file the
15 second amended complaint as well as whether or not I wanted
16 to motion up for the summary judgment motion because you
17 indicated that if we were to proceed and evidence existed,
18 then there would be the possibility of sanctions.

19 Having done that, I have made the decision that I
20 could no longer go forward but my client doesn't share my
21 views.

22 THE COURT: Well, all right. You're aware that I
23 would have the power to try to force you to stay in the case
24 or power to let you withdraw. It really isn't your client's
25 decision to make on that.

1 MR. SHIN: Your Honor, at this point it seems
2 abundantly clear that pursuant to Rule 11, plaintiff's
3 counsel cannot in good faith and upon a reasonable belief
4 contest our motion for summary judgment.

5 Your Honor, there has been an extreme and tremendous
6 amount of financial strain and burden and time placed on my
7 clients, your Honor, and at this point we'd request that your
8 Honor keep Mr. Nix in as counsel, have them pose no contest
9 whatsoever to our motion for summary judgment and summarily
10 enter summary judgment in our client's favor.

11 THE COURT: Well, all right. Now we have
12 Mr. Tillman present here in open court and he indicates that
13 he wishes to speak. I'll let you speak at this time then for
14 the record.

15 Mr. Tillman: Thank you, your Honor. My name is
16 Chitunda Tillman, Senior -

17 MR. FERBER: Hello?

18 Mr. Tillman: My name is Chitunda Tillman, Senior,
19 and I am the author of the script in question and I would
20 like the opportunity to locate new counsel, your Honor. I
21 would like 30 days or so to try to find a different counsel.

22 A couple of quick questions and concerns that I
23 have: First of all, he claims he has written this piece in
24 1993, your Honor. There's absolutely no proof other than a
25 document that they created. We searched hundreds of

libraries, your Honor. This article was nowhere to be found.
1 I lived this experience, your Honor. I got my copyright
2 issued two years before they did. There are elements in the
3 script that I wrote that's in my screenplay in the movie
4 absent from his finished version of his script.

5 They submitted, your Honor, a 1994 Writers Guild
6 certificate that said it was processed the same day. I
7 physically went to California not only -

8 THE COURT: Let's do this. This not going to be
9 useful to recite random claims of facts at this time -

10 MR. SHIN: Your Honor, if I may make one point.

11 THE COURT: -- so what I'm going to indicate - I'm
12 going to do is this: I'm going to grant Brian Nix leave to
13 withdraw instanter subject to any sanctions that may be
14 imposed by the Court after the Court determines and has the
15 appropriate motion brought before the Court. We'll also then
16 grant Chitunda Tillman time to seek to obtain other
17 counsel -

18 Mr. Tillman: Thank you, your Honor.

19 THE COURT: -- but we are not going to give you more
20 than three weeks because this has been pending for a long
21 time. There's a lot of time and money that's been expended.
22 Sanctions could be very severe in this case and so we need to
23 find out how we're going to proceed.

24 MR. SHIN: Your Honor, if I may before you
25

officially enter your ruling. This would be Mr. Tillman's
1 third set of attorneys. The prior two withdrew based on the
2 exact same information and proof of independent prior creation
3 that we've acknowledged today through plaintiff's counsel,
4 your Honor. This will be the third set.

5 Mr. Tillman: Your Honor, I disagree. The simple
6 fact is this: I lived this experience and I can prove it.
7 My copyright pre-dates theirs by two years and there are over
8 a hundred similarities, your Honor.

9 THE COURT: Okay. You're familiar with what the law
10 requires. You've talked with your attorney. Your attorney
11 doesn't agree with you and wishes to withdraw. I'm not going
12 to punish him. I'm going to let him withdraw subject to any
13 sanctions that may be imposed for his actions during the
14 course of this proceeding.

15 Mr. Tillman: Thank you.

16 THE COURT: You also are, of course, subject to
17 sanctions depending upon how the Court would finally rule on
18 this. And obviously when you talk with any other attorneys
19 seeking to have them represent you, you must honestly portray
20 your situation -- that you've gone through a number of
21 attorneys, your last attorney has recently withdrawn subject
22 to sanctions - and we'll see whether you have any other
23 counsel to represent you on the 24th.

24 If not, if you do not have counsel by that time,
25

1 we'll set the final deadlines for rulings, give an
2 opportunity if some additional pleading needs to be filed
3 with respect to this and the matter will go forward again
4 subject to the additional imposition of sanctions if that
5 seems to be appropriate in this case.

6 Mr. Tillman: Okay. So your Honor, three weeks -

7 THE COURT: I'm giving you until the 24th of May and
8 require that you appear back here in court on May 24th at
9 2:30 and I don't require that Mr. Nix reappear unless you do
10 so for some other reason that I'm not aware of. And at that
11 time, we will see how this matter is going to be concluded.

12 Mr. Tillman: And at that point, your Honor, if I'm
13 unable to locate counsel, I will be representing myself, your
14 Honor, and I'll submit the subsequent motions at that time,
15 your Honor. Thank you.

16 THE COURT: All right. But you realize that the
17 longer - depending upon how the rulings turn out, the longer
18 this case continues, the more money it's going to cost you
19 and the more possibility of other serious sanctions that -

20 Mr. Tillman: Yes, sir, your Honor.

21 THE COURT: -- would be imposed against you.

22 Mr. Tillman: Yes, sir, your Honor, but it's
23 important that the Court realize that I have also spent money
24 and time and resources also and the fact that -- just in
25 summary, my copyright pre-dates theirs by two years. They

1 had access, your Honor, and there are over a hundred
2 similarities, your Honor. And besides the fact -

3 THE COURT: All of this may not be relevant to what
4 we're dealing with now but-

5 Mr. Tillman: But they're only - sir, but they're
6 only relying on a 1993 article yet at the same time this same
7 author copywrote (sic) something else. Why you don't
8 copyright movie that made \$300 million?

9 THE COURT: All right. That's it. That will
10 conclude this session of the court. We'll continue the
11 matter to May 24th at 2:30 and require that the plaintiff and
12 counsel for defense appear and we'll see how we proceed at
13 the time.

14 Mr. Tillman: Thank you, your Honor.

15 MR. SHIN: Thank you very much, your Honor.

16 MR. NIX: Thank you.

17 MR. FERBER: Thank you, your Honor.

18 (Which concluded the proceedings in the above-entitled
19 matter.)

20 Certificate

21 I hereby certify that the foregoing is a transcript of
22 proceedings before the Honorable John A. Nordberg on May 3,
23 2007.

24 Dated: May 15, 2007

25 _____

In The United States District Court
Northern District of Illinois
Eastern Division

<p>1 2 3 4 5 6</p> <p>Chitunda Tillman, Plaintiff, vs. Newline Cinema and its officers, et al., Defendants,</p>	<p>))))))</p>	<p>Docket No 05 C 910 Chicago, Illinois May 24, 2007 2:30 o'clock p.m.</p>
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Transcript of Proceeding - Motion Hearing
Before The Honorable John A. Nordberg

Present:

For the Plaintiff: Chitunda Tillman
6141 South Princeton
Chicago, Illinois 60621

For the Plaintiff: Edward M. Shin
Greemberg Traurig L. L. P.
77 West Wacker Drive
Chicago, Illinois 60601

Tom J. Ferber
Pryor J. Ferber
Pryor Cashman L. L. P.
410 Park Avenue
New York, New York 10022

Court Reporter: Lois A. LaCorte
219 South Dearborn Room 1918
Chicago, Illinois 60604
(312) 435-5558

The Clerk 05 C 910, Tillman v New Line Cinema.

1 THE COURT: All right, good afternoon.

2 Mr. Tillman: Good afternoon, your Honor.

3 Mr. Shen: Good morning, your Honor, Edward Shen on
4 behalf of defendants. We will also be having a telephonic
5 appearance by New York counsel. I have provided a telephone
6 number to the court clerk.

7 Mr. Tillman: Chitunda Tillman, Sr., plaintiff.

8 (telephone call placed)

9 THE COURT: All right. This is the Northern District
10 of Illinois District Court, Judge Nordberg presiding in the
11 indication of Tillman v New Line Cinema, et al. The last court
12 appearance we had I think was May 3rd, and we granted attorney
13 Nix leave to withdraw subject to possible sanctions. We
14 continued the case to today's date. Where do we stand now?

15 Mr. Tillman: Well, your Honor, first I want to say
16 good afternoon. A couple of things I want to set straight.
17 First, when we were dealing with the Magistrate Judge Denlow, he
18 advised us to use our SAC, second amended complaint, as our
19 motion - as our response to their motion to dismiss.

20 We followed those orders, and then, your Honor, you came
21 behind and issued an opinion that my current, my former counsel
22 should have proceeded in the fashion that all lawyers should proceed.
23 So at that point I was being misrepresented.

24 So what I would like to do now is just clear up a couple
25

1 of things real quick. In 1994, the Hollywood Reporter article
2 stated that the title "John Q" was in existence, but in actuality
3 the defendants know that you can't copyright a title.

4 In this particular article it didn't mention the
5 author's name or what it was about. Judgment as a matter of law
6 is appropriate only when there is a complete absence of facts to
7 support a verdict so that no reasonable juror could find for
8 the non-moving party, not to mention in this article it doesn't state
9 who wrote it or what it was about. So - excuse me.

10 Mr. Shen: I didn't say anything.

11 Mr. Tillman: So how can they claim that that's prior
12 creation when the law states that once again you can't copyright
13 a title, but on my copyright, which predates theirs by two years
14 specifically had what the movie was about, about a family that
15 was dealing with a hard situation, they had no warning and no
16 insurance.

17 THE COURT: Excuse me, but we just really can't operate
18 in this fashion. Have you been able to succeed in locating
19 another attorney to represent you now?

20 Mr. Tillman: Well, your Honor, right now I'm in the
21 process of locating an attorney. What I'm doing now is my due
22 diligence because I don't want to get caught in another situation
23 where the counsel that I hired is not adequate to defend my
24 rights in this case. I did, however, manage to set up a meeting for
25 next Thursday with a law firm that's interested and would

1 like to sign me as their client, but in the process from now
2 until next Thursday I would like the opportunity to do my own due
3 diligence, search them out, check their record to make sure that
4 I can get justice.

5 And in order to avoid a summary judgment, your Honor, I
6 have to only prove a set of facts and I have done that. I have
7 proved that I am the author of this piece that was in existence
8 two years before theirs was.

9 THE COURT: You're making a lot of statements, and
10 counsel for the other side is chewing on his tongue, and I'm not
11 requiring that he has to respond to the various statements that
12 you make.

13 Mr. Tillman: And that's fine.

14 THE COURT: What we need first of all is for you to
15 obtain another lawyer if you choose to do so, so that we can go
16 ahead with the completion of the briefing for the motions that
17 are pending.

18 Mr. Tillman: Yes, your Honor, but your Honor, they
19 haven't even -

20 THE COURT: You understand, sir, that that's the
21 primary interest. If you don't have attorney by the next
22 court date, we are going to have to proceed.

23 Mr. Tillman: Okay, and I'll be pro se, because, your
24 Honor, they haven't even given me a chance to do an extrinsics test
25 to show the similarities. What I wrote in the script, in

1 the movie I haven't been afforded the opportunity to show my
2 evidence to support the claims that I'm making. So how can they
3 rush to a summary judgment when I haven't even been afforded
4 those rights?

5 Mr. Shen: Your Honor, if I may.

6 THE COURT: Yes.

7 Mr. Shen: The last time we were here, your Honor,
8 this court admonished the plaintiff to tread very carefully in light
9 of the overwhelming amount of evidence demonstrating an
10 independent prior proof of creation of the screen play in
11 question, "John Q."

12 Your Honor, you gave the plaintiff three weeks to obtain
13 counsel. It is apparent that he has been unable to fulfill that
14 task. Your Honor, in the interest of expediting this case,
15 which has gone on since 2005 and has dragged through two sets of
16 counsel, I would respectfully request that this court enter a
17 briefing schedule on the motion for summary judgment. During
18 that time if the plaintiff is able to obtain counsel, then
19 counsel can file a response on behalf of the plaintiff, and if
20 not, the plaintiff can file a response on his own behalf, but,
21 your Honor, this case has dragged on for quite some time, and
22 again, I respectfully request that this court enter a briefing
23 schedule allowing the plaintiff time to simply respond to the
24 motion for summary judgment.

25 Mr. Tillman: Your Honor, with all due respect, this

particular screen play went through several hands, your Honor.

1 The story that they're telling is that in 1993 Kearns sold it to
2 Island Pictures, then Island Pictures sold it to Columbia where
3 it sat on Columbia's shelf for six years, which was subsequently
4 sold to New Line Cinema.

5 The problem, your Honor, is I have over 30 copyrights of
6 Island Pictures. "John Q" is none of - the title "John Q" is
7 none of their copyrights. In Columbia I have 1,300 physical
8 your Honor, I have 1,300 copyrights from Columbia. "John Q" was
9 not a title in that particular work. And then in August of 2000,
10 your Honor, when they finally copywrote it, they didn't put a
11 creation date of 1993.

12 THE COURT: All right. You don't - you haven't been
13 able to obtain counsel.

14 Mr. Tillman: Your Honor, I have a meeting next
15 Thursday. They agreed to sign with me. His name is Attorney
16 Muller & Associates.

17 THE COURT: Right. Whether you will be able to
18 succeed with that or not, it's not clear.

19 Mr. Tillman: So can I have -

20 THE COURT: We are - I am on what is known as senior
21 status.

22 Mr. Tillman: Yes, sir.

23 THE COURT: I'm going to be gone for an extended period of
24 time during the summer months so that I am not going to be
25

1 able to see this case move ahead expeditiously as it should
2 because of the long pendency of it.

3 Mr. Tillman: If you give me to next Friday your Honor.

4 THE COURT: The most important thing of all is for you
5 to use your best efforts to obtain a lawyer, another lawyer
6 represent you because there is, of course, a problem of sanctions
7 and all the rest of it -

8 Mr. Tillman: Yes, sir. Would you like for me to
9 call -

10 THE COURT: -- that may ultimately result from this
11 proceeding.

12 Mr. Tillman: So may I call the attorney and let him
13 acknowledge that he is going to represent me?

14 THE COURT: Yes, you may go ahead with your efforts to
15 obtain another attorney, but in the meantime, I am going to
16 recommend to the Executive Committee that this case be reassigned to
17 another judge of this court so that the case can move ahead
18 during the balance of the time that it will take for the
19 ultimate conclusion of this.

20 And as indicated on the reverse - on the form that will
21 be executed, I'm transferring this for reassignment to another
22 judge pursuant to the provisions of Title 28 United States Code,
23 Section 294 (b), in accordance with the form that will be executed
24 and sent to the Executive Committee of this court.

25

1 So continue on with your efforts to obtain counsel, you
2 will both be notified of a new judge who will be taking over this
3 case and will be able to see to it that it moves ahead more
4 expeditiously than I'm going to be able to because I will be out
5 of state.

6 I think it's extremely important that you make all
7 your current efforts to obtain a lawyer to represent you and
8 I'm pleased that you have an appointment.

9 Mr. Tillman: Yes, sir.

10 THE COURT: And you should urge that that go forward,
11 but in the meantime this action will be taken so that there will
12 be no unnecessary delay in proceeding with the case.

13 Mr. Tillman: Thank you, your Honor. Now, your Honor,
14 for the record—

15 THE COURT: Yes.

16 MR. FERBER: Your Honor, this is Tom Ferber of Pryor
17 Cashman, New York.

18 THE COURT: Yes.

19 MR. FERBER: I wonder if I might make a request since I
20 know that obviously it could take some time for the case to be
21 reassigned and for any new judge to be caught up.

22 Would it be possible today to simply set a date a month
23 out for opposition papers so that as Mr. Shen said, irrespective
24 of whether a new counsel comes in or not, there will be a date well
25 out for opposition papers to the summary judgment motion, so

1 at lease that will be being briefed while the matter is being
reassigned.

2 Mr. Tillman: Your Honor, I disagree for this
3 particular - I'm sorry, your Honor. I'm sorry.

4 THE COURT: I thank counsel for your suggestion, but we are
5 going to leave it up to the new judge to see how this matter
6 is to proceed.

7 So that's the order of the court, and you will all be
8 notified of the new judge that has been assigned to the case.

9 Mr. Tillman: Thank you, your Honor Your Honor, may I
10 put my new address on the record because I changed addresses,
11 your Honor. May I put the new address on the record?

12 THE COURT: Yes, you may.

13 Mr. Tillman: My mailing correspondence until I find
14 counsel is Mr. Chitunda Tillman, Sr. That's C-h-i-t-u-n-d-a,
15 Tillman, T-i-l-l-m-a-n, Sr., 6141 South Princeton Avenue,
16 Chicago, Illinois 60621, Suite No. 1 Phone number,
17 (773) 726-2279. Thank you, your Honor.

18 THE COURT: So that's where you can be located.

19 Mr. Tillman: Yes, by mail or by phone.

20 THE CLERK: Did you file a change of address on the 20th
21 floor?

22 Mr. Tillman: I will go down and do that right now.

23 THE COURT: Were you able to get the details on that?

24 Mr. Shen: Yes, I was, your Honor.
25

THE COURT: All right, that will be the order then.

1 Thank you.

2 Mr. Tillman: Thank you. Your Honor.

3 Mr. Shen: Your Honor, Thank you for your service in
4 this case.

5 MR. FERBER: Thank you, your Honor.

6

7 I certify that the above is a true and correct
8 transcript of proceedings had in the above matter.

9

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Lois A LaCorte

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2 In The United States District Court
3 Northern District of Illinois
4 Eastern Division

5 Chitunda Tillman,)
6 Plaintiff,) No 05 C 910
7 vs.) Chicago, Illinois
8 Newline Cinema et al., ,) June 14, 2007
9 Defendants,) 9:30 a.m.
10)

11 Transcript of Proceeding
12 Before The Honorable MATTHEW F KENNELLY

13 APPEARANCES:

14 Pro Se : Chitunda Tillman
15 6141 South Princeton
16 Chicago, Illinois 60621

17 For the Defendants: Greenberg Traurig L. L. P.
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19 Suite 2500
20 Chicago, Illinois 60601, by
21 MR. EDWARD M. SHIN

22 Pryor Cashman L. L. P.
23 410 Park Avenue
24 New York, New York 10022
25 Mr. Tom J. Ferber
Ms. Stacey M. Faraci

26 Court Reporter: LAURA M. BRENNAN
27 219 South Dearborn Room 2102
28 Chicago, Illinois 60604
29 (312) 427-4393

(The following proceedings were had in open court)

1 THE CLERK: 05 C 910, Tillman v. Newline Cinema.

2 THE COURT: Can the person who is on the phone please
3 give your name?

4 MR. FERBER: Yes. This is Tom Ferber of Pryor Cashman in
5 New York, with my colleague, Stacey Faraci.

6 THE COURT: Can the people in the court room please
7 give your names.

8 The Plaintiff: Chitunda Tillman, Sr., author.

9 MR. SHIN: Edward Shin on behalf of Newline Cinema and
10 Time Warner.

11 THE COURT: So are you co-counsel, Mr. Shin, with the
12 folks that are on the phone?

13 Mr. Shin: That is correct. New York counsel is pro
14 hac vice in this case, your Honor.

15 THE COURT: So here's the deal. The people on the
16 phone don't get to talk unless I ask you to because it is very
17 difficult to hear, and will let Mr. Shin do the talking.

18 This is the first time the case is up in front of me.
19 I think it was in front of Judge Nordberg before.

20 The Plaintiff: Yes, your Honor, and Denlow.

21 THE COURT: Okay, and Judge Denlow.
22 I have a couple of questions actually.
23 I see that there is a second amended complaint that it looks
24 like was filed, but it doesn't look like to me that Judge
25

1 Nordberg ever formally ruled on the motion for leave to file
2 the second amended complaint.

3 Did he, to what people understand? Do you know,
4 Mr. Tillman?

5 The Plaintiff: Yes. Excuse me.

6 MR. FERBER: Your Honor -

7 THE COURT: I asked Mr. Tillman. Then I will ask you.
8 Go ahead.

9 The Plaintiff: Thank you, your Honor.

10 Well, briefly, myself and my previous counsel,
11 attorney Nix, were in front of the Honorable Judge Denlow. At
12 that time, Denlow stated that we could use our SAC, our second
13 amended complaint, as our motion to their -as our response to
14 their motion to dismiss.

15 The defendants concurred with that. Then we followed
16 those instructions.

17 Then Nordberg came behind my attorney and told - and
18 issued an opinion that he was going to deny our motion based on
19 the fact that we implicitly used this SAC as a response to
20 their motion to dismiss without any instruction. So we went
21 back to Denlow and said: Well, Honorable Judge Denlow, you
22 specifically instructed us to proceed in this manner.

23 She said: If you don't like it, you can take it to
24 Nordberg or the Seventh Circuit.

25 The Court: Then you went back to Judge Nordberg and

Then he transferred the case.

1 The Plaintiff: Yes.

2 THE COURT: Mr. Shin, why don't you speak to that

3 MR. SHIN: Your Honor, if I may, that is not what
4 happened exactly. Your Honor, there was a briefing on a motion
5 to dismiss. At that time, instead of filing a response to the
6 motion to dismiss, he sought to file a second amended
7 complaint.

8 Judge Denlow did not want to slow up the briefing on
9 the motion to dismiss.

10 THE COURT: Had the motion to dismiss been referred to
11 Judge Denlow?

12 Mr. Shin: No, it hadn't, your Honor. In fact, he
13 simply brought the motion before Judge Denlow instead of before
14 Judge Nordberg.

15 THE COURT: All right, go ahead. Keep going.

16 MR. SHIN: But Judge Denlow did not want to slow down
17 the briefing on the motion to dismiss, and so he gave the
18 plaintiff the option of filing a proposed second amended
19 complaint that would address some of the deficiencies purported
20 that we asserted was in his first amended complaint.

21 THE COURT: That you were discussing in your motion
22 to dismiss.

23 MR. SHIN: That's correct, your Honor.

24 THE COURT: What became of the motion to dismiss

25

because that's not even on the table at this point, right?

1 MR. SHIN: No, it's not, your Honor. The motion to
2 dismiss was granted in our favor, but Judge Nordberg read
3 into the motion an implicit request for leave to file a
4 second amended complaint and reviewed all the allegations of
5 the second amended complaint and denied - or nevertheless
6 denied that implicit request.

7 And following the granting of the motion to dismiss,
8 plaintiff filed a motion to reconsider, raising the exact
9 same grounds that are now in the now pending motion for leave
10 to file a second amended complaint.

11 He then filed -

12 THE COURT: Stop for a second.

13 Here is the problem

14 MR. SHIN: Yes, your Honor.

15 THE COURT: I have the docket in the case, and I get
16 a report of what motions are pending, and Mr. Tillman's motion
17 for leave to file his proposed second amended complaint has
18 never been rules on.

19 So here is my more specific question. You guys have
20 filed a motion for summary judgment which refers to the first
21 amended complaint. If Mr. Tillman were given leave to file
22 the second amended complaint, would you have to change the
23 summary judgment motion at all?

24 If the people in New York because I assume you were
25

involved in drafting and need to chime in, this is the place
1 where you can chime in.

2 MR. FERBER: Yes, your Honor, and here is the problem.
3 There's not many changes in the proposed second amended
4 complaint. In fact, it's largely the same as the one that
5 Judge Nordberg previously rejected - (inaudible.)

6 Just to be clear, the motion to dismiss was both a
7 12 (b) (6) with respect to no copyright claims and a personal
8 jurisdiction motion with respect to all individual defendants.

9 THE COURT: Okay.

10 MR. FERBER: With respect to the individual
11 defendants, it still wouldn't - a basis for appropriate
12 personal jurisdiction. So they are long out of the case. They
13 won the motion to dismiss. They won the motion for leave to
14 reconsider.

15 There was an ill-considered inappropriate appeal to
16 the Seventh Circuit - was withdrawn. I think that that - it
17 should be in a state of repose --

18 THE COURT: See, here is the problem that I have got,
19 though. I mean, if I consider a motion for summary judgment
20 that concerns the first amended complaint without dealing with the
21 motion for leave to file a second amended complaint, there is a
22 darned good chance that we are going to be doing all of
23 this again in about three months.

24 So unless there is some legal reason why Mr. Tillman
25

1 shouldn't be permitted to file a second amended complaint,
2 which you can then move for summary judgment on, and if you
3 need to tweak this motion, that is fine. It seems to me that
4 the more sensible thing to do would be to grant him leave to
5 file that, then give you the opportunity to amend your summary
6 judgment motion or file whatever other thing you think is
7 necessary. Is there some reason --

8 Because otherwise we have just got this sort of
9 lingering thing out there which I am going to have to deal with
10 at some point. And it just seems to me to make sense to deal
11 with it all at once rather than dealing with them piecemeal.

12 MR. FERBER: Your Honor, let me just -

13 In a larger sense, let me tell you my first concern is
14 that Judge Nordberg was involved in a few conferences. We have
15 been put through an enormous expense in a case where he made
16 clear that sanctions may be appropriate at the end of the day
17 here.

18 That motion - for summary judgment which really does
19 reflect all that is left in the case after the motion to
20 dismiss and the motion to reconsider are the copyright claims
21 against Newline and the parent company, Time Warner. That is
22 all that is addressed.

23 There would be no change in that with respect to
24 addressing the copyright claims with respect to what the
25 complaint is.

THE COURT: Okay.

1 MR. FERBER: What the complaint tried to do, too, that would
2 not be addressed, and I respectfully submit we shouldn't have to
3 do it at this point, is deal with new individual defendants
4 who have long been out of the case, in a cause of action which
5 Judge Nordberg in a 12 (b) (6) previously said should not be
6 in the case.

7 THE COURT: Okay.

8 MR. FERBER: Then - (inaudible.)

9 THE COURT: Stop for a second.

10 Then I think what I would like you to do then, before
11 I set a briefing schedule that requires Mr. Tillman to respond
12 to your motion for summary judgment, I would like you to file a
13 written response to Mr. Tillman's motion for leave to file a
14 second amended complaint, explaining to me why you don't think
15 he should be allowed to file it, and I will give Mr. Tillman a
16 chance to reply to that.

17 Then I will rule on that, and then if I conclude that
18 he shouldn't get to file it, then I will go ahead and set a
19 briefing schedule on your summary judgment motion.

20 If I conclude that he should get to file it, then I
21 will give you an opportunity to amend your summary judgment
22 brief in whatever way you think you need to, and we will do
23 it that way.

24 It just seems to me that dealing with the summary
25

judgment motion before I deal with the motion to amend is going to be putting the cart before the horse. It's just not a good

1 -

2
3 I understand that Judge Nordberg may have said a lot
4 of things, but he transferred the case.

5 MR. SHIN: Well, your Honor --

6 The Plaintiff: Excuse me, your Honor.

7 THE COURT: You know what? You don't need to say
8 anything.

9 The Plaintiff: Your Honor, if I may?

10 THE COURT: Just so you know, I am telling you that
11 you are going to get a chance to at least argue in favor of
12 your second amended complaint. So you don't want to try to
13 persuade me not to do that, I am guessing.

14 Okay, so that is what I want you to do.

15 How long would the defendants like to respond to Mr.
16 Tillman's motion for leave to file the second amended
17 complaint?

18 Don't all talk at once.

19 MR. SHIN: Well, your Honor, I believe that we could
20 do it in 14 days.

21 THE COURT: Is 14 enough, Mr. Ferber, or do you want
22 21?

23 MR. FERBER: Your Honor, I am actually out of town
24 all next week. Twenty-one would be fine.

25

1 THE COURT: Sure, that's fine. The defendants have
2 until the 5th of July to respond to the motion for leave to
3 file the second amended complaint.

4 Mr. Tillman, how long would you like after that to
5 file a reply to their response?

6 The Plaintiff: Maybe 21 days, your Honor.

7 THE COURT: That is fine.

8 The Plaintiff: Secondly, your Honor -

9 THE COURT: Hang on a second. I can do one thing at
10 a time.

11 The 26th of July for the reply.

12 I am going to set the motion for leave to file the
13 second amended complaint for ruling on the 6th of August at
14 9:30, and depending on what I do then, I will enter a briefing
15 schedule on the summary judgment motion or do what we need to
16 do on that.

17 So the motion for summary judgment is going to be
18 entered and continued to the 6th of August.

19 What did you want to say, Mr. Tillman?

20 The Plaintiff: A quick question, a two-part question.

21 THE COURT: Sure.

22 The Plaintiff: The first question is if I am not
23 mistaken, my copyright predated theirs by two years. And on their
24 copyright, they claim to have created this in 2000, but the
25 documents they provided have a 1993 date on it.

1 THE COURT: I am guessing that that is something that
2 it is going to make more sense for you to tell me if and when
3 you end up having to respond to their summary judgment motion
4 rather than now because I will just forget by the, obviously.

5 The Plaintiff: No problem.

6 The second part of the question is I am in
7 negotiations right now with some attorneys.

8 THE COURT: To get into this case?

9 The Plaintiff: Yes, yes.

10 So depending on how that goes, I would like the
11 flexibility to - if the series of meetings that I have don't
12 pan out, I would like maybe 30 days to position myself to
13 defend my - to seek my rights and my justice in the case.

14 THE COURT: All you are going to need to do in the
15 short term is deal with the motion for leave to amend.

16 In other words, Mr. Shin and Mr. Ferber and their
17 colleagues are going to argue to me that you shouldn't get to
18 file your second amended complaint. All you are going to need
19 to deal with in the short run is that, and it is not going to
20 be until sometime in the latter part of August, maybe even
21 early September, before you have to deal with the summary
22 judgment, which is really the merits of the case.

23 The Plaintiff: Thank you, your Honor.

24 THE COURT: So I wouldn't worry about that.

25 I will see you guys on the 6th of August at 9:30 in

the morning.

1 MR. SHIN: Thank you, your Honor.

2 THE COURT: Take care.

3 The Plaintiff: Thank you, your Honor.

4 MR. FERBER: Thank you, your Honor.

5 (Which were all the proceedings had in the above entitled
6 cause on the day and date aforesaid.)

7 I certify that the foregoing is a correct transcript from the
8 record of proceedings in the above-entitled matter.

9

10 _____
Laura M. Brennan
Office Court Reporter
Northern District of Illinois

_____ Date

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2 In The United States District Court
3 Northern District of Illinois
4 Eastern Division

5 Chitunda Tillman,) No. 05 C 910
6)
7 Plaintiff,) Chicago, Illinois
8 v.) August 9, 2007
9 Newline Cinema, et al.,) 9:45 a.m.
10 Defendants.

11 Transcript of Proceedings
12 Before The Honorable Matthew F. Kennelly

13 Appearances:

14 Pro Se: Mr. Chitunda Tillman
15 257 West 61 Place
16 Chicago, IL 60621

17 For the Defendants: Greenberg Traurig, LLP
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20 Chicago, IL 60601, by
21 Mr. Edward M. Shin

22 Pryor Cashman, LLP
23 410 Park Avenue
24 New York, NY 10022, by
25 Mr. Tom J. Ferber
Ms. Stacey M. Faraci

Court Reporter: Laura M. Brennan
219 South Dearborn Street, Room 2102
Chicago, IL 60604
(312) 427-4393

(The following proceedings were had in open court)

1 THE CLERK: 05 C 910, Tillman v. Newline.

2 THE COURT: Can the person on the phone please give
3 your name?

4 MR. FERBER: Yes, your Honor. This is Tom Ferber and
5 my colleague, Stacey Faraci, of Pryor Cashman.

6 THE COURT: And the people in the courtroom?

7 The Plaintiff: Good morning, your Honor; Chitunda
8 Tillman, Sr., plaintiff.

9 MR. SHIN: Good morning, your Honor; Edward Shin on
10 behalf of Newline and Time Warner.

11 THE COURT: Okay. My clerk is going to hand to
12 Mr. Shin and Mr. Tillman a copy of my ruling on the motion for
13 leave to amend. I have denied the motion for leave to amend.
14 It is explained. The ruling is explained in the text of the
15 opinion that I have just handed to you.

16 I think the next order of business is to set a
17 briefing schedule on the motion for summary judgment. There is
18 one thing that is missing from the motion for summary judgment.
19 There is a local rule of this Court, which is local Rule 56.2,
20 which requires that when a motion for summary judgment is filed
21 in a case in which the opposing party is representing himself, as
22 Mr. Tillman is, you have to serve a notice, the terms of which or
23 the text of which is specified in the rule on the pro
24 se party so that they understand exactly what they need to do
25 in order to respond to a summary judgment motion.

1 I did not see that included with the summary judgment
2 papers. So the defendants need to serve a Rule 56.2 notice on
3 Mr. Tillman promptly, like within the next couple of days.

4 So assuming you are going to get that, let's say, by
5 Monday, Mr. Tillman, how long would you like to respond to the
6 motion for summary judgment?

7 The Plaintiff: Maybe 30 days.

8 And, number two, if I may?

9 THE COURT: Sure, go ahead.

10 The Plaintiff: First, can you explain to me why you
11 denied the motion?

12 THE COURT: It is explained in the opinion. It's a
13 seven-page opinion.

14 The Plaintiff: Secondly, even if we use the first
15 complaint on the record, their version of the deficiencies in
16 there are not substantiated by anything but something that is
17 made up.

18 THE COURT: Let me ask you this. When you say "their
19 version of the deficiencies," are you talking about their
20 motion for summary judgment?

21 The Plaintiff: Yes.

22 THE COURT: That is what you should tell me in your
23 response to the motion for summary judgment, among other
24 things, is what is wrong with the arguments they have made.

25 That is your opportunity to do that.

1 As far as the explanation of the ruling on the motion
2 for leave to amend, that is why I have given you a written
3 opinion. It's explained in the written opinion.

4 The Plaintiff: Secondly, your Honor, I am raising
5 several triable issues as to any position that they took. I am
6 the original for the movie, John Q, which predated their
7 copyright by two years. They had access to resolve any
8 jurisdictional statements.

9 I mailed them -I mailed them two copies of my script
10 with the requisite deposit. They cashed it in their account.
11 That is general jurisdiction.

12 THE COURT: I mean, the ruling that I made on whether
13 you should have permission to file the revised version of the
14 second amended complaint is a ruling that I have made. It's
15 explained in writing.

16 The next thing that you are going to have to do is
17 respond to their summary judgment motion which addresses the
18 remaining copyright claims that are in the case. I am not
19 going to decide that motion today. So frankly, it is a little
20 pointless for you to tell me today.

21 The things that you are telling me now are the things
22 that you need to tell me in your response to the summary
23 judgment motion; in other words, why it is you think you have a
24 triable issue of fact, why it is you think you can prove your
25 case and so on.

1 And the way it works is they will have an opportunity
2 to reply to your response, and then I will decide whether there is a
3 triable issue of fact or not. That is what the motion for
4 summary judgment is all about, and that is why I need a written
5 filing.

6 The Plaintiff: Yes, sir, your Honor.

7 But my only question is simply, the main issue here
8 was that Magistrate Denlow entered an order allowing us to use
9 our second amended complaint as our motion - as our response
10 to their motion to dismiss. We followed those instructions.

11 Attorney Faraci and Ms. Burgess sent us, my previous
12 counsel, a letter acknowledging the fact that we were
13 instructed to proceed in that fashion. Then Exhibits A to G,
14 they respond. Seventy percent of their response, which you
15 ordered on the 5th, which I didn't get until the 11th,
16 specifically said that we did it implicitly. They specifically
17 know - and they are operating in bad faith, your Honor.

18 THE COURT: Well, I going to cut this short,
19 Mr. Tillman, because what I relied, and you will see this in
20 the motion, or in the ruling, and anything I say now isn't
21 intended to change the ruling; but largely what I relied on
22 is what Judge Nordberg ordered in his order of March the 31st of
23 2006. That is what I relied upon, okay. And largely, although
24 not entirely, my ruling is based on the proposition that the
25

1 issues that you were trying to reassert here were issues that
2 Judge Nordberg already ruled on, and you don't get a second
3 chance at that.

4 No, I am not going to argue that with you now, sir. I
5 have made a ruling on it, and we are now moving on to the next
6 thing. I am going to give you -

7 The defendant is ordered to serve a local Rule 56.2
8 notice on the defendant by no later than Monday, the 13th of
9 August, or to serve it on the plaintiff, rather, by Monday,
10 the 13th August. The plaintiff's response to the motion for
11 summary judgment is due on the 17th of September. This will
12 be five weeks from Monday.

13 The defendants' reply is due two weeks after that.
14 That is the 1st of October. I will rule by mail. And if the
15 case survives the motion for summary judgment ruling, I will
16 set another status for the purpose of setting the case for
17 trial.

18 The one thing I will tell you is that this notice that
19 you are going to get from them that describes what you need to
20 do in responding to the motion for summary judgment is really
21 crucially important. It is very important for you to pay
22 careful attention to what it says and what you have to do to
23 respond to a motion for summary judgment.

24 Among other things - this is not the only thing --
25 but among other things, it is important that any evidence you

1 give me be authenticated. In the words, if you want to give
2 me your version of what happened, it needs to be in the form of
3 a sworn statement, an affidavit. If you have statements from
4 other witnesses, they need to be in the form of an affidavit
5 or some other sworn statement like a deposition or something
6 like that.

7 If there's documents, basically you need to tell where
8 they came from so that I can make sure that they have been what
9 the law calls authenticated, okay.

10 The Plaintiff: Your Honor, just so that I am correct,
11 though, but the issue that I am having is simply, which hasn't
12 been addressed - we followed Magistrate Denlow's orders to the
13 T. He told us to proceed in that fashion. They acknowledged
14 it. Then Nordberg came behind them and said we did it
15 implicitly.

16 THE COURT: I understand you have a disagreement with
17 what happened with Judge Nordberg, and it sounds like you have
18 a disagreement with what I do. You know, eventually when the
19 case is over with, you will have the opportunity, if you
20 disagree with any of my rulings, to appeal them. But I have
21 made a ruling now and we are going to move on, okay.

22 So I have given you the schedule and I will set
23 another status if I need to following the ruling on the motion
24 for summary judgment. Thanks very much.

25 The Plaintiff: Your Honor, the last question, your

Honor.

1 THE COURT: Yes.

2 The Plaintiff: How can I be assured that you are
3 going to rule in the favor of the plaintiff when I have
4 already submitted that --

5 THE COURT: Nobody has assurance that something is
6 going to be ruled in their favor. I mean, that is kind of the
7 way litigation works. There is no such thing as a sure thing
8 on either side.

9 I am going to take the facts and the law that are
10 given to me. I am going to do my best to decide it
11 appropriately, as the law provides, and if you disagree with my
12 ruling, then once I have ruled, if I rule against you, you will
13 have the opportunity to appeal when the case is over. If I
14 rule against the defendants, then they will have the
15 opportunity to appeal when the case is over, and that is the
16 way it works. Nobody is perfect.

17 The Plaintiff: Your Honor, I would like you to
18 appoint counsel then, please.

19 THE COURT: You are going to file - what you are
20 going to need to do is file a motion because the last time that
21 --

22 Were you appointed counsel before?

23 The Plaintiff: No, I wasn't.

24 THE COURT: So here is what you need to do. What you
25

1 should do when you leave here is go to the 20th floor. Ask the
2 Clerk's office for the forms for a motion to appoint counsel.
3 They will give you two things. They will give you a motion to
4 appoint counsel and they will also give you a financial form
5 because before I can appoint counsel under the local rules
6 here, I have to be satisfied that you are unable financially to
7 hire a lawyer. So you need to make sure you fill that out.
8 You file it with Court. Make sure you keep a copy for
9 yourself so that you have got a copy. Go ahead and file it
10 with the Clerk.

11 In the motion for appointment of counsel, you will see
12 --- I don't remember if it's on the flip side of the page or
13 it's on the second page or it's on the first page, but
14 somewhere on there, there is something that says -that gives
15 you a very small amount of space to describe what you have done
16 to try to find a lawyer on your own.

17 The Plaintiff: Right.

18 THE COURT: That is the most important part. You need
19 to give me in as much detail as you can what you have done to
20 try to find a lawyer on your own, and if you need more space
21 than this little tiny amount of space they give you, use the
22 back of the page, attach an extra page or something like that.

23 Once I get that -

24 In fact, why don't I do this. I am going to figure
25 that you will get that thing today and that you will get it on

1 file within the next few days, okay. What I am going to do, I
2 am going to go ahead and set that schedule, but I am going to
3 set you for another date, a court date next week, let's say
4 on the -

5 What is today, the 9th. Can you come back on the 16th
6 at 9:30?

7 The Plaintiff: Yes.

8 THE COURT: Can you come back on the 16th at 9:30,
9 Mr. Shin?

10 MR. SHIN: Yes, your Honor.

11 THE COURT: I am going to set it for a status then,
12 and assuming I have gotten your motion for appointment of
13 counsel at least a day or two before that, which I am sure I
14 will, I will make a ruling on that then.

15 The Plaintiff: Because, you know, if I wrote a script and
16 I have a copyright in 1998 and they have a copyright in
17 2000, they had access. There are over a hundred similarities.

18 THE COURT: Mr. Tillman, I have not decided the
19 copyright claim yet. I haven't decided the copyright claim
20 yet. It hasn't been decided against you, okay. So there is no
21 need for you to argue that to me now. That is what the motion
22 for summary judgment is for. The copyright claims that you
23 have against Newline and Time Warner are still in the case.
24 That is what I have to decide next.

25 The Plaintiff: But, see, the question is -

1 THE COURT: Again, sir, and this is going to be the
2 last thing I am going to say and then I am going to call the
3 next case, the motion for summary judgment response is when you
4 should be making the arguments to me. I have to decide whether
5 there needs to be a trial, and then if there needs to be a
6 trial, then you will have the opportunity make arguments to
7 a jury. Okay, thanks very much.

8 Call the next case, please.

9 (Which were all the proceedings had in the above entitled
10 cause on the day and date aforesaid.)

11 I certify that the foregoing is a correct transcript from the
12 record of proceedings in the above-entitled matter.

13 _____
14 Laura M. Brennan
15 Official Court Reporter
16 Northern District of Illinois

17 _____
18 Date

1
2 In The United States District Court
3 Northern District of Illinois
4 Eastern Division

5 Chitunda Tillman,) No. 05 C 910
6)
7 Plaintiff,) Chicago, Illinois
8 v.) August 16, 2007
9 Newline Cinema, et al.,) 9:30 a.m.
10 Defendants.)

11 Transcript of Proceedings
12 Before The Honorable Matthew F. Kennelly

13 Appearances:

14 Pro Se: Mr. Chitunda Tillman
15 257 West 61 Place
16 Chicago, IL 60621

17 For the Defendants: Greenberg Traurig, LLP
18 77 West Wacker Drive
19 Suite 2500
20 Chicago, IL 60601, by
21 Mr. Edward M. Shin

22 Pryor Cashman, LLP
23 410 Park Avenue
24 New York, NY 10022, by
25 Ms. Stacey M. Faraci

26 Court Reporter: Laura M. Brennan
27 219 South Dearborn Street, Room 2102;
28 Chicago, IL 60604

(312) 427-4393

1 (The following proceedings were had in open court)

2 THE CLERK: 05 C 910, Tillman v. Newline.

3 THE COURT: Can the person on the telephone please
4 give your name?

5 Ms. Faraci: Good morning, your Honor. This is Stacey
6 Faraci from the law firm of Pryor Cashman in New York.

7 THE COURT: Can you spell your last name so the court
8 reporter has it?

9 Ms. Faraci: F, as in Frank, a-r-a-c-i.

10 THE COURT: Can the people in court all give your
11 names, please?

12 MR. SHIN: Good morning, your Honor; Edward Shin, and
13 John Seiss, a summer associate in my firm, on behalf of Newline
14 Cinema and Time Warner.

15 The Plaintiff: Chitunda Tillman, Sr., plaintiff and
16 author.

17 THE COURT: Okay.

18 THE COURT: I set it for a status hearing today
19 because Mr. Tillman had indicated he wanted to ask me to
20 appoint a lawyer, so I him what to do. He filled out all
21 of the papers. So I have got in front of me Mr. Tillman's
22 motion for appointment of counsel and the financial materials
23 that came along with it.

24 Mr. Tillman, I am first going to ask you if there is
25 anything more you would like to tell me about this motion other

than what you have in our paper

1 The Plaintiff: No, your Honor, just that I would like
2 for you to appoint counsel. I think I did a fairly good job of
3 providing documentation that I needed for the motion, and it's
4 my humble request that you allow that motion to go through and
5 appoint counsel.

6 THE COURT: Does anybody on the defense side have
7 anything that they want to say about it?

8 MR. SHIN: Not at this time, your Honor.

9 THE COURT: Okay. First of all, Mr. Tillman did a
10 complete and thorough job of filling out the motion, and there is
11 no question that you have tried to find a lawyer. The issue
12 of appointment of counsel, though, it is not an automatic thing
13 and it is not a matter of right. I basically have to make an
14 evaluation of the complexity of the matter and whether it is
15 the type of thing that can be handled by somebody without a
16 lawyer.

17 If this case goes to trial, there is absolutely no
18 question that Mr. Tillman will need a lawyer and I would
19 appoint him one at that point. At the present time -

20 And if we were in the middle of discovery, I might
21 have the same conclusion.

22 However, according to the docket in the case, when the case
23 was in front of Judge Nordberg, discovery has been closed since
24 about December, I think, the 29th of last year. That is

25

the last date that Judge Nordberg extended it to.

1 So the only thing that is pending or before me at
2 this point is the motion for summary judgment. I don't know
3 whether the motion for summary judgment has merit or not, but
4 I think that the issues that it presents are fairly
5 straightforward, and I think that Mr. Tillman can respond to
6 that motion adequately without having a lawyer.

7 So the motion for appointment of counsel is denied
8 without prejudice. What I mean when I say without prejudice,
9 it means I am denying it for now. If I ultimately conclude
10 that summary judgment should be denied, then I will appoint a
11 lawyer absolutely at that point to prepare the case for trial.
12 But for the time being, I am denying the motion. So that is
13 the ruling.

14 The Plaintiff: Your Honor, if I may, a couple of
15 quick questions.

16 THE COURT: Yes.

17 The Plaintiff: I have the transcripts with me from
18 Nordberg, and in your opinion, your Honor, you specifically did
19 not mention that during that particular time I was represented by
20 counsel. But in the opinion, if I am correct, it appeared
21 that you said Mr. Tillman failed to respond, your Honor.

22 THE COURT: That is just a way that people do things.
23 In other words, you call the person "the plaintiff" or "the
24 defendant."

25

The Plaintiff: I got you.

1 THE COURT: I usually call them by their
2 than -

3 The Plaintiff: Fair enough.

4 THE COURT: And I recognize it may have been your
5 lawyer who didn't respond to that. But basically the way
6 things work is, barring something extraordinary, the lawyer
7 acts as the agent for the client, and the client's kind of
8 stuck with what the lawyer does or doesn't do.

9 The Plaintiff: So my questions is I have the
10 transcripts with me, and you specifically indicated that we
11 were told to respond twice, that we could use the second
12 amended complaint and respond to the motion to dismiss.

13 I have the transcripts with me, your Honor. Can you
14 point out that because the way I -

15 THE COURT: Mr. Tillman, that's not the way it works.
16 I have made a ruling. If you want to make a request for
17 reconsideration, you are going to need to make it in writing
18 because, I just like I am not making you stand here today and
19 tell me why summary judgment should be denied, I am giving
20 you like five weeks to respond to it in writing.

21 I don't do things on the fly either typically. So if
22 you have got some issues with my ruling, the appropriate thing
23 for you to do is to make written motion for reconsideration,
24 attach whatever it is you think that I overlooked or shouldn't
25

1 have - overlooked or got wrong, attach it to it so I have got
it all in one place, and I will take a look at it.

2 The Plaintiff: Okay. My second question quickly is
3 when you told me - now, this is myself in front of you for the
4 first time, and you indicated that you wanted me to respond to
5 their motion to dismiss or the reason why the claim should be
6 dismissed.

7 THE COURT: No, I did not.

8 What I told you on the first time you appeared in
9 front of me on June the 14th, the defendants actually wanted me
10 to set a briefing schedule on the motion for summary judgment.
11 What I said on June the 14th is that I thought it would make
12 more sense to deal with the motion to file the second amended
13 complaint before I dealt with the motion for summary judgment
14 because the motion for summary judgment was directed towards
15 the first amended complaint.

16 So that is why I put the motion for summary judgment
17 aside and set a briefing schedule on the motion to file the
18 second amended complaint. So I have not dealt with the
19 motion for summary judgment yet. That is what's next.

20 The Plaintiff: So my only question is because the
21 defendants were providing you with documentation as to why it
22 shouldn't go forward; so maybe that would be a better way for me to
23 phrase it.

24 THE COURT: No. I don't know exactly what you are
25

referring to. The defendants have filed-

1 There's two things that the defendants have. Number
2 one, they have got their motion for summary judgment, which I
3 have not considered yet. That is going to be briefed.

4 Number two, they filed a response to your motion for
5 leave to file a second amended complaint, which I did consider
6 along with the materials that you submitted in reply to that.
7 So that is all I have considered so far.

8 I concluded what I concluded in the written order. I
9 am not sure what you are saying.

10 The Plaintiff: Okay, what I am saying is the
11 documentation, the exhibits that the defense was kind enough to
12 provide to me from A to G, entailed why I should not be allowed
13 to go forward. I provided a response to that to you.

14 THE COURT: I considered all of it. You had four
15 volumes of binders. I looked at every last scrap of paper in
16 there.

17 The Plaintiff: Okay. So with that said, I feel that
18 I should have counsel not because I want to make sure that my
19 response to the summary judgment motion is legally accurate and
20 with the requisite documentation so that you will be able to
21 view it in the light most favorable to the plaintiff.

22 THE COURT: Well, I understand what you are saying,
23 but, again, I made a ruling on that. I don't think that it is
24 necessary to appoint counsel for you to respond to this
25

particular motion.

1 I think that the issues that are presented by the
2 motion for summary judgment - like I say, I don't know if they
3 have merit or not. I don't know who is going to win or lose.
4 They are relatively straightforward issues that I think a lay
5 person can respond to, particularly when, if you pay careful
6 attention to that thing that I told the defendants to file
7 called the notice to pro se litigant opposing a motion for
8 summary judgment, which basically tells you in sort of step
9 by step -

10 The Plaintiff: How to proceed.

11 THE COURT: -- what you have to do in order to
12 respond, in order to give me evidence.

13 The Plaintiff: Your Honor, may I look at that for a
14 second?

15 THE COURT: Yes.

16 (Brief interruption.)

17 The Plaintiff: Are you referring to the letter of
18 August 9th, 2007, from Mr. Shin?

19 THE COURT: It is not so much the letter; it is the
20 attachment. It's this thing.

21 The Plaintiff: The notice to pro se litigant?

22 THE COURT: Exactly.

23 The Plaintiff: Okay, I did read this. Now, is this
24 a thorough analysis of exactly -
25

1 THE COURT: What this is, it's not something that
2 they made up. It's something that our court established in our
3 local rules to try to explain to pro se litigants what they
4 need to do - what a summary judgment motion means and what a
5 person needs to do in order to respond to it.

6 And so it is not something they made up; it's
7 something that our court made up, it's probably about a dozen
8 years ago now, and we have had, I think, a pretty decent
9 experience with it. So it's as thorough, I think, as
10 appropriate under the circumstances. It basically tells people
11 what you need to do and how you need to do it.

12 The Plaintiff: Now, with respect to myself not having
13 counsel, the defendants have counsel, your Honor, and so they
14 are not operating -

15 THE COURT: They don't have counsel that was appointed
16 for them by me. You are asking me to appoint a lawyer to
17 represent you for free, and I have told you what I think the
18 appropriate considerations are on that. I have told you what
19 my conclusion is, and that is my conclusion.

20 And, Mr. Tillman, with all due respect, sir, when a judge
21 makes a ruling, it is not a starting place for a whole
22 bunch more discussion. So if there is anything more you want
23 to say, say it now, and we are going to move on to the next case, sir,
24 because I am not going to just sort of repeat myself
25 over and over again. I made a ruling on the motion to appoint

counsel.

1 Is there anything other than the motion to appoint
2 counsel that you want to discuss? If so, tell me now.

3 The Plaintiff: Yes, sir.

4 The defendants haven't provided me with the summary
5 judgment. What am I going to respond to? And they have not
6 provided me with any documentation to respond to, none of the
7 defendants.

8 THE COURT: You are telling me that you have not been
9 served -

10 The Plaintiff: No, I have not.

11 THE COURT: -- with a motion for summary judgment?

12 The Plaintiff: No, I have not.

13 Excuse me. I don't have anything to respond to. They
14 have not provided me with anything to refute any evidence.

15 THE COURT: Fine. I am going to tell the defendants
16 - it was filed back in April, in other words, before the case
17 was assigned to me.

18 What I am going to tell the defendants is that within,
19 you know, within the next couple of days, send Mr. Tillman
20 another copy of the motion for summary judgment and all of
21 the materials in support of it. Provide another certificate of
22 service and file it with the Court so that it's established
23 that you have sent it to him, and then you will have it. If
24 you didn't have it before, then you will have it now.

25

1 The Plaintiff: Okay, now may I have an extra week
so?

2 THE COURT: Absolutely.

3 The Plaintiff: Can we -

4 THE COURT: Absolutely.

5 The Plaintiff: Thank you.

6 THE COURT: Let's see.

7 The Plaintiff: I think it was the 17th.

8 THE COURT: The 17th. So I am going to change that to the
9 28th. The date for the plaintiff's response to the summary
10 judgment motion is extended to the 28th of September, and the
11 date for the defendants' reply is extended to the 12th of
12 October. So that will give you a good six weeks once you get
13 the stuff that they will presumably send you today.

14 MR. SHIN: Your Honor, if I may?

15 THE COURT: If you are just going to say you sent it
16 already, it doesn't matter. Send it again, okay.

17 All right, anything else?

18 The Plaintiff: Yes, the last question.

19 THE COURT: Yes, sir.

20 The Plaintiff: But how do we get to me responding to
21 the summary judgment when they haven't even provided any
22 credible discovery? I have not taken one deposition,
23 your Honor.

24 THE COURT: Honestly, Mr. Tillman, the answer to that
25

1 question is that this case was pending, you know, from whenever
2 it was filed, which I think is about February of 2005, until
3 now. Judge Nordberg at some point set a discovery cutoff date
4 for some date in 2006, and actually it may have been Judge
5 Denlow who set that.

6 Eventually Judge Nordberg in the last order that
7 appears on the docket about the discovery cutoff date is an
8 order -- I am just finding it here -- an order dated September
9 the 27th of 2006. It is actually by Judge Denlow, not by Judge
10 Nordberg, because Judge Nordberg had referred all pretrial
11 matters to Judge Denlow. He extended the discovery cutoff date
12 to December 29th 2006. So now we are about seven and a
13 half, going on eight months after that.

14 When a judge enters an order closing discovery, then
15 discovery is closed after that. If somebody wants to reopen
16 discovery, then they have to make a motion to reopen discovery
17 in writing and have to explain what it is, exactly what it is
18 they need to do and why it is they need to do it.

19 But I am going by the orders that were entered by the
20 judges that were assigned to the case at the time, and
21 discovery has been closed as of the 29th of December of 2006.

22 The Plaintiff: So my question is the ball is in your court
23 basically.

24 THE COURT: No sir. The ball is your court. You have
25 to respond to the motion for summary judgment. I have

done what I need to do.

1 The Plaintiff: Yes, sir, but I am just trying to
2 figure out how this process was streamlined and fast-tracked.

3 THE COURT: I don't think it was fast-tracked, with
4 all due respect, Mr. Tillman. I mean, the case was filed in
5 February of 2005.

6 The Plaintiff: Yes.

7 THE COURT: a discovery cutoff date at the end of
8 December of 2006 basically gave - it's about a 21-or-22 month
9 period between the beginning of the case and the close of
10 discovery, which is way longer than I would have given if the
11 case had been assigned to me, I will tell you that right now.
12 It's not a fast track; honestly, it's kind of a slow track.

13 The Plaintiff: They never answered any interrogatory,
14 your Honor.

15 THE COURT: Will somebody -
16 Like I said before, Mr. Tillman, you can't do this on
17 the fly, okay. You need to file something with me that says,
18 okay, Judge, you are telling me discovery is closed, they
19 didn't do this, they didn't do that, they didn't do this, they
20 didn't do that, here's the support for it, please make them do
21 it before I have to respond to the summary judgment motion.
22 This is what you need to do. It's called a motion to compel
23 discovery.

24 What will happen when you file that is I will get a
25

response from them. I will hear both sides' argument, and then I will rule on it, but I wouldn't wait until the end of September to do that. If you think there is something missing out there that you asked for that you are entitled to, that should be your first order of business is bringing that to my attention.

The Plaintiff: Thank you, your Honor, and I'm on it.

THE COURT: Okay, take care.

The Plaintiff: Have a good day.

(Which were all the proceedings had in the above entitled cause on the day and date aforesaid.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Laura M. Brennan
Official Court Reporter
Northern District of Illinois

Date

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In The United States District Court
Northern District of Illinois
Eastern Division

Chitunda Tillman,)
) No. 05 C 910
Plaintiff,) Chicago, Illinois
v.) September 5, 2007
Newline Cinema, et al.,) 10:10 a.m.
Defendants.)

Transcript of Proceedings
Before The Honorable Matthew F. Kennelly

Appearances:

Pro Se: Mr. Chitunda Tillman
257 West 61 Place
Chicago, IL 60621

For the Defendants: Greenberg Traurig, LLP
77 West Wacker Drive
Suite 2500
Chicago, IL 60601, by
Mr. Edward M. Shin

Court Reporter: Laura M. Brennan
219 South Dearborn Street, Room 2102
Chicago, IL 60604
(312) 427-4393

(The following proceedings were had in open court)

1 THE CLERK: 05 C 910, Tillman v. Newline Cinema.

2 The Plaintiff: God morning, your Honor.

3 THE COURT: Good morning.

4 You need to give your name for the record.

5 The Plaintiff: Chitunda Tillman, Sr., plaintiff, pro
6 se.

7 MR. SHIN: Good morning, your Honor; Edward Shin on
8 behalf of defendants Newline and Time Warner.

9 THE COURT: All right, let me just get -

10 MR. SHIN: I believe we are also expecting the
11 telephonic appearances of pro had vice New York counsel.

12 THE COURT: Yes, but, you know, I am going to need to
13 hear discussion about this, and it's difficult to do that by
14 telephone.

15 Are you prepared to discuss these motions?

16 MR. SHIN: I am prepared, your Honor, but -

17 THE COURT: I don't have a person on the phone. So, I
18 mean, here we are.

19 MR. SHIN: Okay.

20 THE COURT: Let's see. Let me just put these in the
21 sequence that I want to discuss them here. So just give me a
22 second.

23 What I would like to talk about first, I think, are
24 the two motions that Mr. Tillman has made asking - one is
25

1 called Motion To Compel Answers To Interrogatories Truthfully
2 and Without Blanket Answers, and the second one is called
3 Motion To Order Defendants To Produce Original Documents
4 Proving Prior Creation, et cetera.

5 I first have a question for Mr. Tillman about each of
6 those.

7 The Plaintiff: Yes, your Honor.

8 THE COURT: Were these documents -

9 Actually, just talking about the documents first, so
10 the second of the two motions that I mentioned; were these
11 documents that were requested by you or your lawyer during
12 the discovery period before it closed?

13 The Plaintiff: Yes, your Honor.

14 THE COURT: Do you know approximately when he asked -
15 I assume it was your lawyer at that point. Do you know
16 approximately when he asked for them?

17 The Plaintiff If I am not mistaken, it was in '05 of
18 April, around that time. And then he told us to provide each
19 side with discovery.

20 THE COURT: Who is he?

21 The Plaintiff: Denlow.

22 THE COURT: Judge Denlow, okay.

23 The Plaintiff: Yes, Honorable Judge Denlow, and he
24 said, I believe, we had until the fall, which is late December,
25 to have both sides submit.

1 THE COURT: So what you are telling me is that your
2 lawyer asked for those documents but that they were not
3 produced by the defendant.

4 The Plaintiff: Absolutely.

5 THE COURT: I have sort of a similar question about
6 the motion that you have made on the interrogatories. It looks
7 like to me, if I am reading this right, that basically your
8 concern is, or primarily - not your exclusive concern - but
9 your primary concern is that the answers or the responses that
10 the defendants made to a number of the interrogatories
11 basically consisted of an objection that they were too vague.

12 The Plaintiff: Absolutely.

13 THE COURT: And what you are trying to do here is
14 basically try to clarify them so that they won't be vague -

15 The Plaintiff: Absolutely.

16 THE COURT: -- or that they won't be arguably vague.

17 The Plaintiff: Well, your Honor, if I may?

18 THE COURT: Yes.

19 The Plaintiff: The issue was simply this. Initially,
20 when Judge Denlow told us to provide each other with
21 interrogatories and respond and so forth, we did that.

22 The defendants all claim that initially the questions
23 in which we posed interrogatories and which we posed were too
24 vague and incomprehensible. For example, if we said, "Mr.
25 Kearns, why did you say that you copywrote it - why did you

1 say you wrote it in '93 when you didn't copyright it until
2 2000," his response was "I can't understand the question
3 because it's vague and incomprehensible."

4 So for about six months, your Honor, they played this
5 card, this particular card. So what we did was went back and
6 had the judge hear it again, and we said: Your Honor, we
7 basically streamlined the questions. We rephrased them, we
8 shortened them and made them more specific and more direct.

9 Then he said: Okay, serve them again. We served them
10 again, and then they responded again, standing on their
11 objections.

12 So we brought the motion back to the judge, and he
13 specifically said: Well, looking at the response to the
14 interrogatories, these are blanket answers, which is the issue
15 that my previous counsel wrote. So basically -

16 THE COURT: What did Judge Denlow end up deciding
17 about that?

18 The Plaintiff: He never officially forced them to
19 answer interrogatories.

20 He, in fact -- which I believe I was provided a copy
21 of the transcripts for that particular date. He, in fact,
22 said: Mr. Nix - to the defendants - you have not answered
23 those interrogatories. These are blanket answers.

24 So a lot of time was wasted, your Honor, because
25 basically in order for us to go forward with the information,

1 we didn't have it. So now I am representing myself. I don't
2 mean to cause undue, you know, hardship on the Court or -

3 THE COURT: What you are referring to is that you
4 provided a transcript of the proceedings in front of Judge
5 Denlow on September the 27th, and he says.

6 "As far as I am concerned, the response is really not
7 a response. You didn't answer a single question. You just
8 stood on your objection. That really doesn't advance the ball
9 as far as I am concerned."

10 That is what you were referring to a second ago?

11 The Plaintiff: Yes, sir.

12 THE COURT: Did anything happen after that, in other
13 words, after September the 27th in front of Judge Denlow with
14 regard to those interrogatories?

15 The Plaintiff: No, your Honor.

16 And once again, we filed another motion to reconsider
17 the second amended complaint because we were trying to get them
18 to comply with discovery. So my hands are essentially tied to
19 the point where I can prove by responding to the summary
20 judgment motion the deficiencies in every factual statement
21 that they allege is factual.

22 I have the evidence to refute that, but in order to
23 make it official, they need to put something on the record
24 specifically saying this is what happened. Then I can provide
25 documentation refuting it to raise a triable issue because

1 right now they are basically not, you know, behaving in good
2 faith, to the point --

3 One of their arguments is the jurisdictional
4 statement, and that is why the Writers Guild and Kearns were
5 dismissed from the case, but if you actually look at the
6 transcripts which I provided, Judge Denlow specifically said
7 when they asked in court, "can we be dismissed from the
8 case," he said, "no, stick around, provide discovery, or I
9 will give Mr. Nix and Mr. Tillman" - excuse me - "Mr. Nix at
the particular time - subpoena power."

10 THE COURT: Subpoena power, right. Yes, I saw that.

11 The Plaintiff: So essentially we have not gotten
12 anywhere, and that is why the second amended complaint was so
13 important because my contention, or my inclination, is not to
14 cause undue hardship on the Court or on the defendants, but
15 to have an opportunity to get a better well-pled complaint in.

16 So that is why I was having certain issues with this
17 because Denlow specifically said to use the second amended
18 complaint as a response to the motion to dismiss. So we didn't
19 do it was implicit, it never gave us an opportunity to get the
20 documents that we needed.

21 THE COURT: Let me ask you this question.

22 The Plaintiff: Yes.

23 THE COURT: The interrogatory response that you refer
24
25

1 to as blanket answers that you attach to your motion are from
Newline Cinema?

2 The Plaintiff: Yes.

3 THE COURT: Is it Newline Cinema that you want to
4 provide the future responsive answers, or are there other
5 people or companies besides Newline Cinema that you are asking
6 for?

7 The Plaintiff: It's other companies, your Honor.

8 THE COURT: Which one?

9 The Plaintiff: WGA.

10 THE COURT: Right. That is Writers Guild of America?

11 The Plaintiff: Yes, Writers Guild of America.
12 Kearns, Island Pictures.

13 THE COURT: Island, i-s-l-a-n-d?

14 The Plaintiff: Yes, sir, Island Pictures which
15 formerly - which were dissolutioned at that particular time,
16 and it wasn't even incorporated.

17 The individuals that owned Island own Evolution now,
18 which for months after they had access to my script, they
19 started a new company with my script. So those same two
20 individuals, Mark Burg and Olen Koules, which I had in the FAC
21 and the SAC, I would like to be able to ask them specific
22 questions also since they were at that particular time
23 presidents of Island who claim to have had the script.

24 THE COURT: Well, just so it's clear, what I am
25

1 talking about is the motion you filed asking people to provide
2 further answers to the interrogatories that you served some
3 time ago.

4 MR. SHIN: Yes.

5 THE COURT: So we are talking about Newline, Writers
6 Guild of America, you said Kearns.

7 The Plaintiff: Kearns, WGA.

8 THE COURT: Right, I mentioned that. Island Pictures
9 and who else specifically?

10 The Plaintiff: Columbia.

11 THE COURT: Columbia.

12 The Plaintiff: Variety and Daily Variety.

13 THE COURT: Variety and Daily Variety.

14 The Plaintiff: Yes.

15 THE COURT: Okay. Now, the last question I want to
16 ask you and then I am going to talk to Mr. Shin for a couple of
17 seconds --

18 The Plaintiff: Yes, your Honor.

19 THE COURT: As of this moment right now, based on the
20 prior rulings that were made -

21 The Plaintiff: Yes.

22 THE COURT: -- which of those companies and people
23 that you mentioned are still currently named defendants in
24 the case?

25 The Plaintiff: Newline Cinema and Time Warner, which,

1 if I may raise another issue because the Newline Cinema and
2 James Kearns share credit on the copyright. So my inclination
3 is that if Newline Cinema is still in it, Kearns should still
4 be in it since they both share credit.

5 THE COURT: Okay. Mr. Shin, I guess - I mean, there
6 is a lot on the table here, and I guess Mr. Tillman has filed
7 written motions. If you want to have a chance to file a
8 written response, I mean, I would need it in fairly short
9 order, but I will give you a chance to do that, and I will give
10 Mr. Tillman a chance to file a written reply.

11 MR. SHIN: Your Honor, if I may clarify a couple of
12 things?

13 THE COURT: Yes.

14 MR. SHIN: Plaintiff cites to a transcript from
15 September of last year.

16 THE COURT: Yes.

17 MR. SHIN: Up on that date, on that hearing before
18 Judge Denlow, was a motion to compel against the Writers Guild.
19 He is misciting this transcript. These are responses to
20 interrogatories that were propounded by the Writers Guild,
21 not by Newline or Time Warner.

22 Now, if you look at the response that we give, we say
23 that we had no information. You know, we actually do provide
24 substantive responses.

25 Now, your Honor, in short, Newline and Time Warner

1 have spent a significant amount of funds defending what they
2 believe to be a meritless case. Discovery has been open for
3 almost two years The referral was just canceled or terminated
4 just this past June.

5 Your Honor, we are at a point where we filed a motion
6 for summary judgment. We were invited to do so. Both Judge
7 Nordberg and Judge Denlow cautioned the plaintiff that there
8 was a high likelihood of sanctions in this case.

9 Now, our position is that discovery is not needed to
10 respond to our motion for summary judgment. However, there is
11 a process or procedure under the rules by which a non moving
12 party who believes that discovery is needed to respond to the
13 summary judgment may ask the Court for leave to do so.

14 Obviously, the Court knows I am referring to Rule
15 56 (f).

16 THE COURT: No, I understand that. But I guess before
17 you even get to Rule 56 (f), I guess my threshold issue is the
18 question of, you know, was this something that was left open by
19 the judges that were handling the case, Judge Nordberg as the
20 assigned district judge and Judge Denlow on the referral. Was
21 this topic that Mr. Tillman has brought to my attention here by
22 these two motions, are these things that were left open during
23 the period of time that discovery was still open, or are they
24 things that, you know, that are being brought up after the
25 fact?

1 That is why I-- I mean, I wasn't assigned to the
2 case. It wasn't my case. I don't have the background of this
3 that either Judge Denlow or Judge Nordberg have. I can
4 obviously read what is on the docket, but I don't necessarily
5 have access to all of the transcripts involved to the extent
6 that they exist.

7 That is why I was suggesting that you might want to
8 file a written response because the threshold issue for me
9 is, you know:

10 A. Was the discovery requested during the period of
11 discovery?

12 B. Is the answers were not adequate, was an issue
13 made about that.

14 C. If the answers was made about that, did the
15 judge rule on it? If so, what the ruling in?

16 And D. Was there something that was left open?

17 And depending on how those questions get answered, and
18 there may be other questions, but depending on how those
19 questions get answered, I will have to decide whether I am
20 going to require a response to these particular discovery
21 requests before Mr. Tillman responds to the motion.

22 I would need - I am going to need more history, I
23 guess is what I am telling you here, than what I have right
24 now. Mr. Tillman has given me history, but you are entitled to give
25 your side or the history as well, and that is why I was

suggesting -

1 MR. SHIN: Well, the history is very short, your
2 Honor.

3 THE COURT: Okay.

4 MR. SHIN: The history is simply, if you look at the
5 documents, there -

6 THE COURT: Which I have up on the screen in front of
7 me.

8 MR. SHIN: -- there you will see over the past two
9 years not a single motion to compel filed against Newline and
10 Time Warner.

11 Your Honor, oral motions to compel are not, generally
12 speaking, acceptable in this court, and that is in my practice,
13 your Honor. In any event, there was no briefing schedule, nor
14 was there any order entered saying we're going to delay
15 discovery, we're going to hear further argument on discovery
16 that is necessary.

17 Your Honor, you will see nothing, and the reason for
18 that, your Honor, is that there wasn't any objection. There
19 was no conference regarding discovery disputes as required in
20 the rules. There was absolutely nothing until one or two weeks
21 ago when we see all of these interrogatories.

22 Now, I am willing to go step by step.

23 THE COURT: Hang on a second.

24 I am looking at the docket here, and it looks like in
25

1 the middle of September of 2006, Mr. Nix, acting as
2 Mr. Tillman's lawyer, filed a motion to compel that related to
3 Writers Guild of America, WGA, and that was the motion that
4 Judge Denlow heard on September the 27th.

5 The order that I am reading off the docket says:
6 "Motion hearing held on September 27th, 2006, regarding motion
7 to compel and motion to quash." The motion to quash was
8 actually a motion by the Writers Guild basically asking to deny
9 the motion to compel discovery. So it didn't add anything.

10 The order by Judge Denlow says: "Motion to compel WGA
11 to comply with written discovery is denied. Plaintiff is
12 permitted to proceed with issuance of a subpoena. Discovery is
13 extended to December 29th, 2006. WGA's motion to quash
14 plaintiff's motion to compel discovery is granted subject to
15 Judge Nordberg's ruling on the plaintiff's motion for
16 reconsideration of the Court's April 3rd, 2006 minute order."

17 There's more things just setting a schedule.

18 So, okay, let me ask another question. Mr. Tillman,
19 after the hearing in front of Judge Denlow on September the
20 27th of 2006, did your lawyer send a subpoena to WGA or anybody
21 else for the documents or the materials that were at issue at
22 that point that you know of?

23 The Plaintiff: If I understand this correctly, I
24 believe our contention was we had to wait to see what -

25 THE COURT: Judge Nordberg --

1 The Plaintiff: -- Judge Nordberg would rule, and he
just ruled this year.

2 THE COURT: He ruled on January the 18th. He denied
3 the motion for reconsideration.

4 The Plaintiff: Absolutely.

5 THE COURT: At any point after that, did your lawyer
6 send out a subpoena to WGA?

7 The Plaintiff: At that particular time, we were still
8 under the auspice that we could subpoena them and that they had to
9 comply.

10 THE COURT: Bud did your lawyer do that is my
11 question.

12 The Plaintiff: Not to my knowledge, no.

13 So where we stand now is a couple of points I want to
14 reference real quick.

15 THE COURT: Go ahead.

16 The Plaintiff: Newline said in one of their responses
17 to the interrogatories was, when I asked or when my previous
18 counsel asked about Variety and Daily Variety, their response
19 was: Well, Mr. Tillman should know about that.

20 Now, what kind of response is that? I asked a
21 specific question because everything is interconnected, your
22 Honor. Let me give you an example. The only prior creation
23 they have is from an institution that this particular
24 periodical wasn't even in existence at the particular time. To
25

1 add insult to injury, they provided a November 15th, 1993
2 article from Variety, from Daily Variety. Daily Variety wasn't
3 created until September '98.

4 So what I did to cover all bases, I did research,
5 myself and my attorney. We have all the physical hard copies
6 for that particular day. It's not in there. So it's basically
7 a process of elimination. If the evidence they provide - if I
8 have dissected the information and at the end of the day we
9 have nothing, they have to be held accountable. So instead of
10 them answering a question, they said: Oh, well, Mr. Tillman
11 should have more knowledge about that.

12 Your Honor, this movie made hundreds of millions of
13 dollars. Certainly they should have a better argument than
14 that.

15 My second point is this, and if I have to sign a
16 sworn statement or affidavit, I will. Mr. Nix and Mr. Shin had a
17 meeting one day after court, and Mr. Shin specifically said:
18 Mr. Nix, if you believe that these articles are, you know,
19 fabricated or whatever your contention is, why did you allow
20 them out of the case? Mr. Nix replied: Because they are going
21 to testify that those articles were not of our creation.

22 THE COURT: Okay.

23 The Plaintiff: So at this particular point, they have
24 absolutely no credible claim to this movie "John Q." I
25 wrote it.

THE COURT: You are getting beyond the issue.

1 The Plaintiff: I do apologize.

2 THE COURT: You don't need to apologize.

3 This is what I would like to do. First of all, I need
4 to know more about this motion, and the next thing I need is
5 something from you, Mr. Tillman. What I need you to file -
6 and I am going to give each side a week do each of the things
7 I am about to say. What I need from Mr. Tillman by the 12th of
8 September is a - we will call it a supplement to your motions
9 to compel.

10 The Plaintiff: I'm sorry?

11 THE COURT: Supplement to your motions to compel.

12 And what you need to put in there is you need to give
13 me an explanation in writing of why it is you need the
14 information in these two motions to compel to respond to the
15 summary judgment motion. That was what Mr. Shin was referring
16 to earlier when he referred to Rule 56(g) of the Rules of Civil
17 Procedure. I need you to give me an explanation of that.

18 And I am not going to require there to be, you know,
19 affidavits. We have got a pro se litigant here, at least for
20 the time being. So that is what I need from you by a week
21 from today.

22 By the 19th of September - that is a week after that
23 -- I need from the defendants a response to the motions to
24 compel and to Mr. Tillman's supplement to the motion to
25 compel.

And if you want to put that all in one document, that is fine.
1 You don't have to split it up into different things.

2 Then a week after that - that is on the 26th of
3 September, Mr. Tillman I need you to give me a written reply
4 to their response. Again, you can put it all in one thing;
5 you don't have to split it up into separate things.

6 I am going to set the case over for a status hearing and for
7 ruling on Mr. Tillman's motions on the 3rd of October.

8 As far as the motion for appointment of counsel, I am
9 entering and continuing it to that date, too, because I want
10 to see how this develops before I make a decision on that.

11 And so the briefing schedule on the summary judgment
12 motion is vacated because I am going to need to reset it after
13 I deal with these other motions because otherwise Mr. Tillman
14 would have to respond before you are even back in here.

15 The Plaintiff: Yes, your Honor.

16 THE COURT: Everybody got all those dates? It will be
17 in an order, but has everybody got everything?

18 The Plaintiff: I believe I do.

19 MR. SHIN: Your Honor, if I may, just for a quick
20 housekeeping detail?

21 THE COURT: One thing I would like somebody to do is
22 give me the entirety of - and you may have given me almost the
23 whole thing, but the entirety of the transcript of Judge
24 Denlow. The way things get docketed, I can't click on them; we
25

1 have to go hunting for them. And so if you have got them, it's
2 just easier for you to give them to me.

3 What did you want to say, Mr. Shin?

4 MR. SHIN: Just a housekeeping detail. Just in case
5 our brief runs over 15 pages, may I have leave in advance -

6 THE COURT: Twenty.

7 MR. SHIN: Twenty pages?

8 THE COURT: Yes.

9 MR. SHIN: Only because we have to describe the
10 history of the case.

11 THE COURT: I gave you 20, and your reply can be up to
12 20 pages, too.

13 The Plaintiff: Thank you, your Honor.

14 THE COURT: I will see you on the 3rd of October.

15 The Plaintiff: Your Honor, one last point.

16 THE COURT: One.

17 The Plaintiff: That's it, and I appreciate that.

18 If you look at the prior exhibits that I responded to
19 a couple of months ago -

20 THE COURT: Volumes.

21 The Plaintiff: I do apologize. I will work on trying
22 to centralize that information, but at any rate, I did provide
23 you a copy of all the transcripts up until this day, if that
24 would satisfy the Court.

25 THE COURT: I probably forgot that. It would probably

be helpful for you to get it to me again.

1 The Plaintiff: Okay.

2 MR. SHIN: And also just to clarify, it's Rule 56(f).

3 I just didn't want him to look at the wrong rule.

4 Thank you, your Honor.

5 The Plaintiff: Thank you, your Honor.

6 THE COURT: Take care.

7

8 (Which were all the proceedings had in the above entitled

9 cause on the day and date aforesaid.)

10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

11

12 _____
13 Laura M. Brennan
14 Official Court Reporter
15 Northern District of Illinois

_____ Date

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