

Mack and Millie initiated 39 film development projects, entered into 18 script development contracts with writers, and submitted 48 projects to Paramount for consideration. Benevolent paid the development companies approximately \$1.7 million. On April 28, 2005, Benevolent ceased funding Mack and Millie's projects. In May 2005, Cort and Johnson met for dinner. Johnson told Cort that Benevolent had run out of money and would not make any further payments to the development companies. Mack and Millie owed \$800,000 on commitments to writers. Cort's reputation in the industry was at risk. Cort arranged for RCP to loan \$800,000 to Mack and Millie to meet their obligations.

On June 24, 2005, Mack and Millie filed a complaint against Johnson and Benevolent. Benevolent filed a cross-complaint against Mack, Millie, RCP, and Cort. The operative second amended complaint filed April 5, 2006, added RCP as a plaintiff and alleged causes of action against Johnson and Benevolent for breach of written contract, breach of written guarantee, promissory fraud, fraud in the inducement, negligent misrepresentation, and declaratory relief.

A jury trial commenced on May 20, 2008. On May 29, 2008, plaintiffs served a subpoena on Johnson to produce documents the following day, which would establish his financial condition in the event the jury awarded punitive damages.

The jury returned its verdict as to liability and compensatory damages on June 5, 2008. On the cause of action for breach of contract, the jury found that Mack and Millie entered into a contract with Benevolent. Mack and Millie did all, or substantially all, of the things that the contract required them to do and the conditions occurred that were required for Benevolent's performance. Benevolent gave up, through words or conduct, its right to require any unsatisfied conditions to occur. Benevolent failed to perform as required under the contract, and Mack and Millie were harmed as a result. Mack and Millie's damages for

past losses totaled \$3,250,793.20, which consisted of the balance of \$2,350,000 on the contract, out-of-pocket obligations of \$821,573.95, and interest on out-of-pocket obligations of \$79,219.31. In addition, the jury found Johnson was the alter ego of Benevolent.

On the cause of action for intentional misrepresentation, the jury found that Johnson or Benevolent had made a false representation of a material fact to RCP that induced RCP to form Mack and Millie and enter into the term credit agreement with Benevolent. Johnson and/or Benevolent knew that the representation was false, or made it recklessly without regard for its truth, intending RCP to rely on the representation, and failed to disclose an important fact that RCP did not know and could not reasonably have discovered, intending to deceive RCP by concealing the fact. RCP's reliance on the false representation and deception was a substantial factor in causing harm to RCP. The jury found RCP's damages were out-of-pocket obligations of \$821,573.95 and interest on the out-of-pocket obligations of \$79,219.31. The jury also found that Johnson was guilty of malice, oppression, or fraud in his conduct.

Johnson's attorney told the trial court that Johnson's preference was for the jury to return the next day to determine the amount of punitive damages, rather than wait until the following week. Therefore, the court ordered Johnson to produce the financial records requested in the subpoena to plaintiffs by 8:00 a.m. the following morning.

On June 6, 2008, plaintiffs objected that the documents Johnson produced in response to the subpoena were inadequate. They requested a finding that the burden to establish Johnson's financial condition had been waived. The documents produced by Johnson showed that Benevolent had \$700 in a bank account and no income, but had made distributions of \$700,000 to its partners. Johnson testified at trial that