

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
HOLDS THAT A PRODUCER SUING A SCREENWRITER FOR BREACH OF CONTRACT
FOR FAILING TO DELIVER SCREENPLAYS
MAY NOT SEEK IDENTICAL DAMAGES FOR CONVERSION
BASED ON THE SAME FAILURE TO DELIVER**

BRIARPATCH LIMITED L.P. AND GERARD F. RUBIN V. GEISLER ROBERDEAU, INC., PHOENIX PICTURES, INC., MICHAEL MEDAVOY AND TERRENCE MALICK, 2001 U.S.DIST. LEXIS 8617 (S.D.N.Y. 2001)

On June 27, 2001, the United States District Court for the Southern District of New York denied production company Briarpatch Limited L.P. and its sole limited partner, Gerard F. Rubin, their motion to amend their complaint in a breach of contract lawsuit to include two claims of conversion against screenwriter/director Terrence Malick (“Badlands,” “Days of Heaven,” “The Thin Red Line.”)

Briarpatch and Rubin’s lawsuit against production company Geisler Roberdeau, Phoenix Pictures, Phoenix chairman Mike Medavoy and Malick includes claims for breach of contract and other causes of action. Their complaint in the District Court alleged that “Rubin had contributed at least \$750,000 for development of the ‘Thin Red Line’ project, including funds to acquire the film rights to the underlying novel of the same name by James Jones, and to pay for writing and development of the screenplay by Malick; \$500,000 for the ‘English Speaker’ project, including funds for Malick's writing of the screenplay; \$1,200,000 for the ‘Sansho the Bailiff’ project, including funds for Malick's writing of the stage play; and \$2,000,000 for the “White Hotel” project, including funds to acquire rights to the novel of the same name by D.M. Thomas and to pay for screenplay adaptations by Dennis Potter and others, and for revisions by Chuck Mee.” Rubin claimed that despite his investments, Geisler and Roberdeau had “entered into a scheme. . .to cut Rubin and Briarpatch out of the ‘Thin Red Line’ project,” and that Malick had failed to deliver either “The English Speaker” screenplay or the “Sansho the Bailiff” stage play.

On January 12, 2001, Briarpatch and Rubin filed a motion to amend the complaint to include two conversion causes of action against Malick for failing to deliver “The English Speaker” and “Sansho the Bailiff.” As the District Court explained in denying this motion, citing earlier cases, “the tort of conversion is the ‘exercise of unauthorized dominion over the property of another in interference with a plaintiff’s legal title or superior right of possession.’ ” Furthermore, the Court explained, “[T]he plaintiff asserting a conversion claim must allege that it had ‘ownership, possession or control of the (property) before its conversion. . .’ ”

The District Court found that because the screenplay and the stage play had never been given to the plaintiffs, the plaintiffs never had “ownership, possession or control” of those works. The Court also reminded that conversion is an action “for the recovery of property,” and here the plaintiffs were asking for monetary damages identical to those in their breach of contract claims. Therefore, they could not add the conversion causes of action to their complaint.