

THE POWER OF THE SPOKEN WORD

by
Dinah Perez

Introduction

Many people are under the mistaken impression that oral contracts are not binding. Hollywood would come to a standstill if that were the case, since it takes attorneys weeks, if not months, to negotiate the language eventually committed to a written contract. People have been led to believe that oral contracts do not exist because such contracts are difficult to prove, and, at best, are legally binding only upon certain circumstances. This article attempts to educate the reader as to when an oral contract is effective and how to facilitate proof of its existence.

Oral Contracts in the Entertainment Industry

For entertainment related purposes, oral contracts are binding when the object of the contract can be accomplished within 12 months, and when you are buying or selling something whose value is less \$500. For example, an actor who orally assents to perform in a film, which goes into production within the next 12 months, is committed to do so even though the actor expects the terms of the oral agreement to later be converted into a written form. Main Line Pictures won the lower court trial against Kim Basinger because it proved the existence of an oral contract. Basinger argued that there should have been a signed written contract, but there was sufficient evidence to corroborate her assent and, hence the oral contract's existence.

So, what does it take for an oral contract to be binding? The parties to the contract have to come to an agreement on all the major deal points, i.e., when hiring an actor you must come to an agreement on compensation, number of days the actor will be required, role and credit. An oral contract cannot exist if there isn't agreement on all of the major deal points. Therefore, be sure to negotiate and come to an agreement on all of the deal points that are considered standard and important for the type of contract you are attempting to create.

Whenever hiring a union employee it is a good idea to refer to that union's collective bargaining agreement, since that agreement might preclude an oral contract. For example, the Screen Actor's Guild (SAG) requires a written and signed Nudity Waiver if you are hiring a SAG member and the role requires nudity. The actor can agree to be in your film on an oral basis, but the actor must acknowledge and assent to the nudity in writing. The Writer's Guild of America also requires a written contract for writing assignments, the option or sale of a screenplay, treatment, teleplay, etc. In other words, modern law may recognize the existence of an oral contract, but a union may not, and the union's collective bargaining agreement always rules. Therefore, know what the union requires prior to entering into negotiations with a member of any union, and adhere to those requirements.

Get It In Writing When You Can

Having an oral contract and proving its existence in a court of law are two different things. Louis B. Mayer was famous for saying "an oral contract isn't worth the paper it's written on." Oral contracts are difficult to prove and, as such, it is best to secure a written contract whenever possible. If the situation does not lend itself to a written contract, then create a paper trail: after a pitch meeting send the executive a letter thanking them for their time and reiterating the purpose of the meeting; when you are hired, or are hiring someone, send a letter confirming the terms and accepting the position; and, send a letter confirming the terms of the agreement for sale/purchase when selling/buying equipment. Regarding the latter, you will need a signed writing memorializing the purchase/sale from the opposing party if you are bargaining for something worth more than \$500

Conclusion

In summary, you can create a legally binding entertainment industry oral contract if you follow the checklist provided below.

- 1) Negotiate and agree to all the major deal points.
- 2) Make sure the contract can be fulfilled within 12 months.
- 3) Only sell/buy something for which you will be paid, or are paying less than \$500 (does not apply to intellectual property).
- 4) In cases where you are dealing with a union member, make sure the collective bargaining agreement does not preclude or restrict the oral contract. If it does, then adhere to the union rules.
- 5) Confirm the oral contract in writing.

Follow the above rules when you are attempting to form a binding oral contract. All around, whenever possible, memorialize the oral contract into a writing signed by both parties. It's when you think you can't afford to hire an attorney, that you can't afford not to have one.

This article is not a complete review of the subject matter and, as such, the reader should not make decisions on the basis of the above without consulting with an attorney.