

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK

Raine v. Viacom International Inc.

224 A.D.2d 362 (N.Y. App. Div. 1995) · Decided February 29, 1996

SUMMARY

The court affirmed dismissal of an action seeking film royalties from Viacom International, alleged to be a third-generation successor to obligations under the Hollywood Film Trust Agreement. The dismissal was proper because the plaintiff failed to provide sufficient proof that the films at issue were covered by the agreement, and the claims were dismissed without prejudice.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	Per Curiam; Sullivan, J.P.; Rosenberger, J.; Wallach, J.; Ross, J.; Williams, J.
JURISDICTION	New York
DECIDED	February 29, 1996
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment entered after a non-jury trial dismissing the action against Viacom International Inc. at the close of plaintiff's case.
STANDARD OF REVIEW	Whether plaintiff offered sufficient proof to establish that the films at issue were specifically covered by the Trust Agreement and whether dismissal at the close of plaintiff's case was proper.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Raine v. Viacom International Inc.

TOPICS

- contracts
- commercial litigation
- civil procedure
- summary judgment

PRACTICE AREAS

- Contract law
- Commercial litigation
- Civil procedure

QUESTIONS PRESENTED

1. Whether the trial court properly dismissed plaintiff's royalty action at the close of plaintiff's case for failure to provide sufficient proof that the films were covered by the Hollywood Film Trust Agreement.
2. Whether the dismissal should have been with prejudice or without prejudice.

HOLDINGS

1. The action was properly dismissed because plaintiff failed to offer sufficient proof that any of the films at issue were specifically covered by the Hollywood Film Trust Agreement.
2. The trial court correctly dismissed plaintiff's claims without prejudice because the dismissal was based on a lack of evidence that might become available in the future.

KEY QUOTATIONS

"In any event, this action was properly dismissed at the close of plaintiffs case because plaintiff failed to offer sufficient proof (Royal Ins. Co. v Mercy Hosp., 204 AD2d 219) that any of the films in question were specifically covered under the Trust Agreement." (363)

"The trial court, in settling judgment, correctly dismissed plaintiffs claims without prejudice, because the disposition was based on lack of evidence which might become available at some point in the future (Roland v Hubbard, 36 AD2d 599)." (363)

FACTUAL BACKGROUND

Plaintiff sought film royalties under the 1955 Hollywood Film Trust Agreement, which was allegedly signed by New Rochelle Music Recording Studios, Inc. New Rochelle had owned rights to cartoons produced by its affiliate, including 72 episodes of "Heckle & Jeckle," and royalties were also claimed for 37 feature-length films licensed by Viacom. Viacom conceded that it succeeded to New Rochelle's assets but disputed succession to New Rochelle's obligations under the Trust Agreement. Plaintiff failed to offer sufficient proof that the films at issue were specifically covered by the Agreement.

PROCEDURAL HISTORY

The action sought film royalties allegedly owed under the 1955 Hollywood Film Trust Agreement. The Supreme Court, New York County, dismissed plaintiff's claims during a non-jury trial after plaintiff failed to provide sufficient proof that the films at issue were covered by the Trust Agreement. The Appellate Division unanimously affirmed, without costs, and upheld dismissal without prejudice.

DISPOSITION

affirmed

CASES CITED

- Royal Ins. Co. v. Mercy Hosp., 204 A.D.2d 219
- Roland v. Hubbard, 36 A.D.2d 599

OPINION

Raine v. Viacom International Inc. 224 A.D.2d 362

PER CURIAM.

—Judgment, Supreme Court, New York County (Ira Gammerman, J.), entered April 26, 1995, which dismissed plaintiff's action as against defendant Viacom International during a non-jury trial, unanimously affirmed, without costs. This is an action for film royalties. Viacom is the alleged third-generation successor-in-interest to the obligations of New Rochelle Music Recording Studios, Inc., which was an "original signatory" to the Hollywood Film Trust Agreement in 1955. New Rochelle had owned the rights to a number of cartoons produced by its affiliate, Terry toons, Inc., including 72 episodes of "Heckle & Jeckle", which were allegedly covered under the Trust Agreement and telecast during 1966-1971. Also at issue are royalties claimed on 37 feature-length films licensed by Viacom. On Viacom's pre-trial motion for summary judgment, dismissal of a prior royalty action against CBS, Viacom's immediate predecessor, was held not to preclude the instant action because the factual identity of the two cases had not been demonstrated. *363Viacom conceded that it was the successor to the assets of New Rochelle, but not to its obligations under the Trust Agreement, because Viacom's immediate predecessor-in-interest, CBS Films, Inc., had never formally assumed such obligations when it acquired and liquidated New Rochelle's stock in 1965. In any event, this action was properly dismissed at the close of plaintiffs case because plaintiff failed to offer sufficient proof (*Royal Ins. Co. v Mercy Hosp.*, 204 AD2d 219) that any of the films in question were specifically covered under the Trust Agreement. We need not reach Viacom's anticipated defense that the case was limited by prior stipulation to the 72 "Heckle & Jeckle" cartoons on which settlement had already been reached. The trial court, in settling judgment, correctly dismissed plaintiffs claims without prejudice, because the disposition was based on lack of evidence which might become available at some point in the future (*Roland v Hubbard*, 36 AD2d 599). Concur — Sullivan, J. P., Rosenberger, Wallach, Ross and Williams, JJ.