Batfilm Productions, Inc., et al., Plaintiffs, v. Warner Bros. Inc., et al., Defendants

Superior Court of the State of California for the County of Los Angeles; Consolidated Cases No. BC 051653 and No. BC 051654

March 14, 1994

Yaffe, J.

Phase I Statement of Decision

The Court divided the trial of this case into two phases. Phase I consisted of a bench trial of plaintiffs' non-jury claims. Those claims primarily concern plaintiffs' "Net Profits" participation in the Batman motion pictures.

The plaintiffs are two individuals, Benjamin Melniker and Michael Uslan, and the two corporations that furnish their services, Batfilm Productions, Inc., and Franklin Enterprises, Ltd. The defendants are Warner Bros. and Polygram Pictures, Inc. (The Court previously granted the summary judgment notion of defendants Peter Guber, Jon Peters, and the Guber-Peters Entertainment Co.) Polygram Pictures did not participate in the bench trial.

In 1979, Mr. Melniker and Mr. Uslan obtained an option on the motion picture rights to the Batman comic book characters. In November 1979, they made a deal with Casablanca Productions (Polygram's predecessor) for the development and production of a motion picture to be based on those characters (the "Casablanca Agreement"). Under the Casablanca Agreement, Mr. Melniker and Mr. Uslan were entitled to receive certain fixed and contingent compensation if a Batman motion picture were produced.

In 1981, Polygram assigned to Warner Bros. its rights and obligations under the Casablanca Agreement. In 1988, Mr. Melniker and Mr. Uslan and Warner Bros. signed a written amendment to the Casablanca Agreement (the "Warner Agreement"). Under the Warner Agreement, Mr. Melniker and Mr. Uslan were entitled to receive $300,000 in fixed compensation for Batman, plus a $100,000 "deferment" once the film generated a certain level of receipts, plus 13% of the so-called "Net Profits," as defined in an attachment to the Warner Agreement.

Warner Bros. has paid Messrs. Melniker and Uslan the $300,000 fixed fee and $100,000 deferment. Under the Warner Agreement, Warner Bros. has also paid Melniker and Uslan an additional $700,000 in fixed fees on two additional motion pictures (Batman Returns and Batman: Mask of the Phantasm). Warner Bros. will have similar financial obligations to plaintiffs on each additional Batman motion picture. Although Batman has generated more revenue than any other Warner Bros. film, it has not generated any "Net Profits" under plaintiffs' contract. Melniker and Uslan filed suit in 1992 claiming, inter alia, they were denied their fair "Net Profits" compensation.

The primary claims originally to be tried to the Court were the Tenth Cause of Action for an accounting of the revenues and expenses of Batman and the Eleventh Cause of Action for a declaration that plaintiffs' "Net Profits" definition is unconscionable and, thus, unenforceable. On the first day of trial, however, plaintiffs dismissed their accounting claims. Warner Bros. is therefore entitled to prevail on that cause of action.

At the close of plaintiffs' case, Warner Bros. moved for judgment pursuant to section 631.8 of the Code of Civil Procedure. In reviewing the evidence, the Court believed that Mr. Melniker and Mr. Uslan had offered evidence to prove that the Warner Agreement was contract of adhesion that should be strictly interpreted against Warner Bros. and should not be interpreted in a way that would be contrary to plaintiffs' reasonable expectations.

But a contract of adhesion is a contract, and a contract of adhesion is not the same as an unconscionable contract, which is no contract at all. "Unconscionability" requires a far different level of proof. The plaintiffs did not prove that they are to be relieved of their contract with Warner Bros. on the ground of unconscionability.

Mr. Melniker negotiated the Warner Agreement on his and Mr. Uslan's behalf. No one is less likely to have been coerced against his will into signing a contract like the Warner Agreement than Mr. Melniker. This former general counsel and senior executive of a major motion picture studio (Metro-Goldwyn-Mayer) knew all the tricks of the trade; he knew inside and out how these contracts work, what they mean, and how they are negotiated.

Even with Mr. Melniker's knowledge and experience, plaintiffs complain that Warner Bros. knew when the parties signed the Warner Agreement in 1988 that Batman would not generate "Net Profits." Plaintiffs did not explain the relevance of this to the issue of whether their contract is unconscionable. Even if they had, however, they failed to prove that Warner Bros. knew in 1988 that Batman would not generate any "Net Profits."

At the core of plaintiffs' case is their argument that the contract was not fair to them because Warner Bros. and others earned millions of dollars on Batman and plaintiffs did not. The answer that argument is that ever since the King's Bench decided Slade's Case in 1602, right down to today, courts do not refuse to enforce contracts or remake contracts for the parties because the court or the jury thinks that the contract is not fair.

That principle is not some medieval anachronism. This society, this country, this culture operates on the basis of billions of bargains struck willingly every day by people all across the country in all walks of life. And if any one of those people could have their bargain reexamined after the fact on the ground that it was not fair or on an assertion that it was not fair, we would have a far different type of society than we have now; we would have one that none of the parties to this case would like very much.

When one talks about a motion picture and the claims of this type that are made, they all have one thing in common: the plaintiff comes in and says, "Without me, they would have had nothing, and look how they treated me." But the process of making a motion picture consists of the process of bargaining with many talented people on many different and inconsistent bases, and making bargains with them that cannot rationally be compared one to another. It would not be good for the motion picture business or for the parties to this case if any one of those people on any motion picture could come back and ask a court to remake the bargain that he made on the ground that he now asserts, after the fact and in light of the success of the picture, that he was not fairly treated in comparison with others. Whether a contract is fair is not the issue. A contract is not unconscionable simply because it is not fair. Plaintiffs claim that the Warner Agreement is unconscionable within the meaning of Civil Code section 1670.5. To be unconscionable, a contract must "shock the conscience" or, as plaintiffs alleged in paragraph 139(b) of their complaint, it must be "harsh, oppressive, and unduly one-sided."

After considering all the evidence, the Court finds that the plaintiffs have failed to prove that the Warner Agreement, taken as a whole, is unconscionable.

That, however, is not the end of the inquiry that the Court must make. Under Civil Code section 1670.5, if the evidence shows that any part of a contract is unconscionable, the Court may refuse to enforce that part of the contract.

During the trial, plaintiffs claimed that eight elements of the Warner Agreement's "Net Profits" definition were unconscionable: (1) the 10% advertising overhead charge; (2) Warner Bros.' retention of any economic value of United States tax credits created by the payment of taxes in the foreign territories where Batman was distributed; (3) application of the 15% production overhead charge on participation payments to third parties; (4) application of the 15% production overhead charge on the $100,000 deferment; (5) all of the interest charges; (6) the costs charged by Pinewood Studios in England for holding sets and stages after completion of photography; (7) application of the 15% production overhead charge to the costs incurred at the Pinewood Studio lot; and (8) the inclusion in "gross receipts" of only 20% of the revenue from videocassettes, less a distribution fee. (These items, and the dollar amounts associated with them, are listed on Exhibit B9.)

In considering Warner Bros.' motion for judgment under Code of Civil Procedure section 631.8, the Court had little difficulty in rejecting seven of plaintiffs' claims.

As to all of the items relating to overhead charges (Items One, Three, Four, and Seven), the Court granted Warner Bros.' motion for judgment because the plaintiffs failed to prove that historically Warner Bros.' indirect general administrative expenses for motion picture production and advertising -- "overhead" -- do not equal or exceed the amount charged under the "Net Profits" definition, namely, 15 percent of production costs and 10 percent of advertising expenditures. As a matter of fact, plaintiffs conceded that they could not show that the overhead charges under the "Net Profits" definition exceeded Warner Bros.' actual overhead costs, taken as a whole.

Plaintiffs argued that charging overhead on certain production costs, advertising expenses, gross participations, deferred payments, and payments paid to foreign studios was unconscionable because the administrative cost of providing those goods or services was less than the contractual 10 or 15 percent overhead surcharge. Plaintiffs did not prove that allegation. And, more important, the test is not whether Warner Bros.' overhead charge on a particular direct cost item exceeded the "actual" administrative or other indirect expenses associated with providing that one item or service to the production or advertising of a movie. As the accounting experts for both sides testified, overhead cannot be assessed with such precision. Under the circumstances, the test must be whether the production and advertising overheads charged by using the percentage allocations are, in total, unconscionably higher than Warner Bros.' actual production and advertising overhead costs on a motion picture. Plaintiffs offered no evidence to support such a finding.

Plaintiffs also failed to show that the advertising costs, gross participations, deferred payments, and payments paid to foreign studios were not historically included in the pool of costs that were compared to Warner Bros.' general and administrative expenses to estimate its rate of overhead. In sum, plaintiffs simply failed to prove that any of the overhead charges are unconscionable.

The Court also granted Warner Bros.' motion for judgment as to Item Two, the foreign tax credit. According to plaintiffs, when a motion picture is distributed overseas, many countries impose a tax on the receipts generated. That tax payment gives rise to a credit that can be used under certain circumstances to offset United States income tax obligations. Plaintiffs claimed that, in calculating their "Net Profits," it is unconscionable for Warner Bros. to deduct foreign taxes as a distribution expense without adding something for the value of the foreign tax credits. The plaintiffs failed to prove, however, that Warner Bros. received any foreign tax credits on Batman, or the amounts thereof, or that Warner Bros. received any actual financial benefit from those tax credits when calculating and paying its United States tax obligations. Even if such a credit had been received, the plaintiffs failed to prove that they ever asked Warner Bros. to agree that, in computing "Net Profits," Warner Bros. would augment the gross receipts of the picture by the amount of the tax credits. No such provision is contained in plaintiffs' contract and there was no evidence that they ever expected such treatment of the tax credits.

The Court also granted the motion for judgment as to Item Six, the Pinewood Studios sound stage holdover costs, because there was no evidence that the holdover charge is not properly a cost of the first Batman movie.

The Court granted the motion for judgment as to Item Eight, videocassette distribution, on the ground that Mr. Melniker knew that a 20 percent royalty was standard in the industry. He never questioned it. He never asked that it be changed. The plaintiffs did not prove that the 20 percent royalty unconscionably exceeded the actual revenues, less expenses, from videocassette distribution. They also offered no evidence that a "distribution fee" on the distribution of videocassettes was unconscionable. Nor did they prove that they could have negotiated a better deal elsewhere at the time this deal was made, in which a higher percentage of video revenue, without deduction of a distribution fee, would be credited to the picture in calculating "Net Profits."

Item Five concerned the "interest" charge on production costs. Under paragraph 2A of plaintiffs' contract, "Net Profits" become payable once the picture generates enough gross receipts to cover the specified distribution fees, distribution expenses, and production costs. Until then, under paragraphs 2A and 9 of plaintiffs' "Net Profits" definition, the production costs bear an interest charge. Under the contract, Warner Bros. reduces the interest-bearing balance of production costs with only those gross receipts that remain after deducting the distribution fees and expenses. Plaintiffs claim that is unconscionable for Warner Bros. to not credit the interest-bearing production cost balance with all of the gross receipts of the picture. They also claim that because the distribution fee represents a source of "profit" for Warner Bros., this method of calculating interest is unconscionable because it allows Warner Bros. to charge interest on the cost of production after the picture has generated revenues in excess of that amount.

Plaintiffs did present sufficient evidence to require Warner Bros. to defend its method of computing interest under the contract.

After listening to the evidence presented by Warner Bros. and the arguments of counsel, however, the Court finds that Warner Bros. met its burden of showing that the method of calculating interest provided in their contract is not unconscionable. Warner Bros. met its burden in a number of ways.

Warner Bros. showed that the interest provision in the Warner Agreement is really the same provision found in the 1979 Casablanca Agreement that Warner Bros. did not have anything to do with. Plaintiffs were bound by that contract before they ever dealt with Warner Bros. They cannot complain that they were harmed by being required to abide by a similar provision with the same effect.

Warner Bros. also showed that plaintiffs would not have gotten any better deal on the calculation of interest if they had borrowed the production costs from a third party lender, had produced Batman themselves as independent producers, and had hired Warner Bros. (or presumably anybody else) just to distribute it for them. In that case, plaintiffs would not have been able to use all of the gross receipts generated by the film to repay their lender. Just as in their contract with Warner Bros., they would have been able to repay the production financier only with the gross receipts left over after the distributor retained enough to cover the distribution fees and expenses.

And, if there is a "profit" embedded within Warner Bros.' distribution fee, plaintiffs did not prove the amount of it or that it prevented the picture from showing a net profit.

All of that evidence is sufficient to overcome the plaintiffs' evidence as to the unconscionability of the method of calculating interest under their "Net Profits" contract.

Separately, plaintiffs argued that the language of their "Net Profits" contract did not permit Warner Bros. to continue charging interest once the gross receipts of the picture -- prior to the deduction of distribution fees and expenses -- exceed the total production costs. The duty of the Court is to find out what the parties meant by the language of their contract. If the contract is one of adhesion, the Court interprets it so that it does not defeat the reasonable expectations of the party who was forced to adhere to it. But the Court will not substitute its own interpretation of the contract if that is not what the evidence shows that the parties intended.

The Court rejects plaintiffs' argument because there was no evidence that plaintiffs ever interpreted the language of the interest provisions in the manner claimed at trial. Mr. Melniker was an old hand at motion picture agreements of this type and had negotiated other "Net Profits" contracts like this himself. He had experience with similar provisions yet he never mentioned the interest issue with anyone at Warner Bros. Plaintiffs offered no evidence that they expected Warner Bros. to compute interest in any other manner. They have thus failed to prove that the contract defeated their reasonable expectations.

Given the Court's decision in favor of Warner Bros. on plaintiffs' unconscionability claim, Warner Bros. is entitled to prevail on plaintiffs' Thirteenth Cause of Action for "unfair competition" because that claim was dependent on a finding that their "Net Profits" contract was unconscionable.

Finally, Warner Bros. is entitled to prevail on plaintiffs' Fourteenth Cause of Action arising from the exhibition of the animated Batman television series. Plaintiffs presented no evidence on this cause of action at trial. [ELR 16:4:3]