

Murray Burnett et al., Appellants-Respondents,
v.
Warner Bros. Pictures, Inc., et al., Respondents-
Appellants, et al., Defendant.

Supreme Court, Appellate Division, First Department,
New York

September 5, 1985

CITE TITLE AS: Burnett v Warner Bros. Pictures

OPINION OF THE COURT

Concur--Sandler, J. P., Carro, Asch, Lynch and Ellerin,
II. [127 Misc 2d 553.]

Order of the Supreme Court, New York County (John Bradley, J.), entered January 28, 1985, which granted defendants-respondents-appellants' cross motion for summary judgment dismissing the complaint without prejudice, for lack of subject matter jurisdiction, is unanimously modified on the law, to the extent of granting to defendants summary judgment dismissing the complaint, with prejudice, for failure to state a cause of action, and the order is otherwise affirmed, without costs and disbursements. *711

In 1941 plaintiffs wrote a play entitled "Everyone Comes to Rick's." On January 12, 1942, plaintiffs assigned their rights to the unproduced play to defendant Warner Brothers, Inc., in exchange for \$20,000. The agreement entitled "Assignment of All Rights" states that plaintiffs

"give, grant, bargain, sell, assign, transfer and set over all now or hereafter existing rights of every kind and character whatsoever pertaining to said work, whether or not such rights are now known, recognized or contemplated and the complete and unconditional and unencumbered title in and to said work of all purposes whatsoever.

"2. I further give

..... the absolute and unqualified right to use
said work in
whole or in part, in whatever manner said purchaser may
desire, including (but
not limited to) the right to make, and/or cause to be made,
literary, dramatic,
speaking stage, motion picture, photo play, television,
radio, and/or other
adaptations of every kind and character, of said work, or

any part thereof; and
for the purpose of making or causing to be made such
adaptations or any of them
the purchaser may adapt, arrange, change, novelize
..... add to and subtract from said work, and/or
title".

In 1942 Warner Brothers released the motion picture "Casablanca" which was based on plaintiffs' play. Later, in 1955, Warner Brothers produced a television series entitled "Casablanca" which was essentially a sequel to the movie and set in the 1950's. Plaintiff Burnett, although aware that the television series had been produced, made no protest to Warner Brothers of infringement of character or sequel rights. Warner Brothers then obtained a copyright registration for another adaptation of plaintiffs' play, which was produced for television in 1983. This production was a "prequel" story set in 1940, one year prior to the action of both plaintiffs' play and the movie "Casablanca". The weekly series was broadcasted from April 10 to May 7, 1983.

Plaintiff learned that the new "Casablanca" television series was being planned but raised no objection until June 21, 1983, after the series had been aired. Plaintiffs' attorney complained to the National Broadcasting Company, Inc. (NBC), which broadcasted the series, that the television series, based on the characters plaintiffs had created, violated their rights to those characters. Plaintiffs followed this complaint by commencing the instant action in July 1983, seeking a declaratory judgment that the defendants had no rights under the contract to use the characters of his play except for the use in the movie *712 "Casablanca". Plaintiffs sought \$10,000,000 in compensatory and \$50,000,000 in punitive damages. Defendants Warner Brothers and NBC answered, asserting five affirmative defenses, including failure to state a cause of action and lack of jurisdiction over the subject matter due to Federal preemption under 17 USC § 301, the Federal copyright law.

Justice Bradley granted defendants' motion to dismiss the complaint on the ground that the court did lack subject matter jurisdiction to determine the controversy because of Federal preemption. The court, therefore, dismissed the complaint, but without prejudice, to enable plaintiffs to bring an action in Federal court.

Plaintiffs argue on appeal that the court erred in finding that their causes of action concerning their rights to their characters were preempted by the Federal copyright law. Defendants argue, inter alia, on their cross appeal, that plaintiffs' complaint should have been dismissed with prejudice because plaintiffs contracted away any and all rights they had in their play.

We need not determine whether plaintiffs' causes of action are preempted by the Federal copyright law, for it is beyond question that plaintiffs failed to retain any rights, copyrightable or otherwise, which defendants could infringe, and have consequently failed to state a cause of action, thus requiring dismissal with prejudice.

The very words of the agreement between plaintiffs and Warner Brothers unequivocally demonstrate plaintiffs' intent to assign all their rights "of every kind and character whatsoever pertaining to said work, whether or not such rights are now known, recognized or contemplated

..... for all purposes whatsoever." Moreover, plaintiffs granted Warner Brothers the absolute right to use the work in any manner or medium they desired and to add to or subtract from the work. The assignment of rights agreement contains no clauses specifically enumerating any rights retained by plaintiffs or enumerating any rights excluded to Warner Brothers. Rather, it contains only general clauses assigning all imaginable rights to defendant Warner Brothers. The explicit wording of the clause belies plaintiffs' allegation that the assignment "contains no grant with respect to characters, continuation or sequel rights." The assignment was very obviously designed to grant the assignee the broadest of rights with respect to plaintiffs' play. In instances where the assignment clauses were drafted in the broadest of terms, courts have concluded that had the plaintiff intended to retain certain rights, specific *713 clauses to that effect should have been included in the agreement. (See, *Bartsch v. Metro-Goldwyn-Mayer*, 391 F2d 150; *Landon v. Twentieth Century-Fox Film Corp.*, 384 F Supp 450.) Inapposite to these cases and the instant appeal is *Warner Bros. Pictures v. Columbia Broadcasting Sys.* (216 F2d 945), where, unlike the language in *Burnett's* assignment, the contract there contained specifically enumerated rights granted to Warner Brothers and specifically enumerated rights reserved by the author Hammet. Since plaintiff retained no rights in his play which could be infringed, the complaint below fails to state a cause of

action and is dismissed with prejudice.

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N.Y.A.D.,1985.

BURNETT V WARNER BROS. PICTURES, INC.

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Murray Burnett et al., Appellants,
v.
Warner Bros. Pictures, Inc., et al., Respondents, et al.,
Defendant.

Court of Appeals of New York

Argued February 12, 1986;

decided April 3, 1986

CITE TITLE AS: Burnett v Warner Bros. Pictures

SUMMARY

Appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered September 5, 1985, which modified, on the law, and, as modified, affirmed an order of the Supreme Court at Special Term (John A. K. Bradley, J.; opn 127 Misc 2d 553), entered in New York County, denying plaintiffs' motion for summary judgment, granting defendants' cross motion for summary judgment, and dismissing the complaint without prejudice. The modification consisted of granting defendants summary judgment dismissing the complaint, with prejudice, for failure to state a cause of action.

In 1941, plaintiffs wrote a play entitled "Everyone Comes to Rick's." On January 12, 1942, plaintiffs assigned their rights *913 to the unproduced play to defendant Warner Brothers, Inc. in exchange for \$20,000. The agreement, entitled "Assignment of All Rights", stated, inter alia, that plaintiffs

"give, grant, bargain, sell, assign, transfer and set over * * * all now or hereafter existing rights of every kind and character whatsoever pertaining to said work, whether or not such rights are now known, recognized or contemplated and the complete and unconditional and unencumbered title in and to said work for all purposes whatsoever.

"2. I further give * * * the absolute and unqualified right to use said work, in whole or in part, in whatever manner said purchaser may desire, including (but not limited to) the right to make, and/or cause to be made, literary, dramatic, speaking stage, motion picture, photoplay, television, radio, and/or other adaptations of every kind and character, of said work, or any part thereof; and for the purpose of making or causing to be made such adaptations or any of them the purchaser may adapt, arrange, change, novelize * * * add to and subtract from said work, and/or the title".

In 1942, Warner Brothers released the motion picture "Casablanca", which was based on plaintiffs' play. In 1983, Warner Brothers obtained a copyright registration for another adaptation of the play, which was produced for television in 1983. That production was a "prequel" story set in 1940, one year prior to the action of both the play and the movie "Casablanca". The television series was broadcast weekly from April 10 to May 7, 1983 on defendant National Broadcasting Company, Inc. Plaintiff subsequently commenced the instant action for a declaratory judgment that defendants had no rights under the 1942 agreement to use the characters of their play except for the use in the movie "Casablanca", and for \$60 million in compensatory and punitive damages.

Special Term concluded that the court lacked subject matter jurisdiction owing to Federal preemption of copyright matters (17 USC § 301), and that, accordingly, the case should be dismissed without prejudice to commencement of an action in Federal District Court. The Appellate Division concluded that it need not determine whether plaintiffs' causes of action were preempted by Federal law since it was beyond question that plaintiffs failed to retain any rights, copyrightable or otherwise, which defendants could infringe, and have, consequently, failed to state a cause of action, thereby requiring dismissal with prejudice.

Burnett v Warner Bros. Pictures, 113 AD2d 710, affirmed. *914

HEADNOTES

Copyrights--Assignment of Rights (1) In an action, brought by the authors of the play from which the 1942 movie "Casablanca" was adapted, against the producers of a 1983 television series of the same name for a declaratory judgment that defendants had no rights under a 1942 agreement to use the characters of their play except for use in the 1942 movie, and for \$60 million in damages, an order of the Appellate Division, which modified an order dismissing the complaint without prejudice by dismissing the complaint with prejudice, is affirmed for reasons stated in the memorandum at the Appellate Division, which concluded that, by virtue of the 1942 agreement, it was beyond question that plaintiffs failed to retain any rights, copyrightable or otherwise, which defendants could infringe.

APPEARANCES OF COUNSEL

Patricia J. Murphy and Michael J. Zissu for appellants.

Donald S. Zakarin and Philip R. Hoffman for respondents.

OPINION OF THE COURT

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492 N.E.2d 1231, 501 N.Y.S.2d 815
(Cite as: 67 N.Y.2d 912)

Order affirmed, with costs, for reasons stated in the memorandum at the Appellate Division (113 AD2d 710).

Concur: Chief Judge Wachtler and Judges Meyer, Simons, Kaye, Alexander, Titone and Hancock, Jr.

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N.Y. 1986.

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