

Complex Contract and Commercial Litigation: Case Descriptions

- ***Bakalar v. Vavra* (U.S. District Court for the Southern District of N.Y.):** We represent David Bakalar, the plaintiff and counterclaim-defendant in a dispute commenced in 2005 regarding the ownership and provenance of an Egon Schiele drawing alleged to have been confiscated by the Nazis during World War II. In August 2011, Judge William H. Pauley ruled in favor of Bakalar, finding that Bakalar was a good faith purchaser of the artwork and that the counterclaimants and their predecessors had unreasonably delayed in suing for replevin of the art, and that such delay had caused a loss of important evidence that unduly prejudiced Bakalar's ability to defend his title. The available evidence supported that the Schiele work had been sold to a Swiss art gallery by the former owner's sister-in-law after she was able to escape Nazi-occupied Austria. The case is currently on appeal to the U.S. Court of Appeals for the Second Circuit.
- ***Barrett v. Polygram* (U.S. District Court for the District of N.J.):** We obtained summary dismissal of claims brought by a composer that Polygram's licensing of a song for use in the videocassette of the movie *Porky's* exceeded the rights granted by the composer.
- ***Bloom and Atkinson v. Hearst* (U.S. District Court for the Northern District of Texas) (unreported decision), *aff'd*, 33 F.3d 518 (5th Cir. 1994):** We successfully defended claims brought by the authors of a book that Hearst's sale of a videocassette of the television movie *Killing in a Small Town* which was derived from the book exceeded the rights granted by the authors. After a full trial, the District Court dismissed all of plaintiffs' claims. The result was upheld on an appeal brought by the plaintiffs and opposed by Pryor Cashman in the U.S. Court of Appeals for the Fifth Circuit.
- ***Bonds Jewelry v. Stonestar Limited* (N.Y. Supreme Court and Appellate Division, 1st Dep't):** We successfully defended a breach of contract claim involving diamonds owned by Iranian royalty and obtained a multimillion dollar judgment for the defendant on its counterclaims. We handled the appeal brought by the plaintiff and were successful in having our lower court victory upheld.
- ***Burnett and Allison v. Warner Bros. Pictures, Inc.*, 113 A.D.2d 710, 493 N.Y.S.2d 326 (1st Dep't 1985), *aff'd*, 67 N.Y.2d 912, 501 N.Y.S.2d 815 (1986):** We successfully defended claims brought by the authors of the play *Everybody Goes to Ricks* (on which the movie *Casablanca* was based) that use of their characters in Warner Bros. television show *Casablanca* exceeded the rights granted by the authors. Our motion for summary judgment was granted and we successfully defeated plaintiffs' appeals, both in the Appellate Division and the N.Y. Court of Appeals.
- ***CBS Inc. v. Stern* (N.Y. Supreme Court):** We represented famous radio personality Howard Stern and other defendants in a multimillion dollar contract litigation brought by CBS after Stern signed with Sirius satellite radio. The matter was settled prior to trial.
- ***Gale v. Stallone* (U.S. District Court for the Southern District of New York, 1996):** We successfully defended Sylvester Stallone against claims for breach of contract and fraud arising out of a painting he did as a young man and obtained dismissal without damages of all claims after a full trial.

- ***Goldstein v. Westenberg* (N.Y. Supreme Court)**: We successfully prosecuted this breach of contract action involving the sale of a California Closets location and obtained a significant judgment for our client after a full trial.
- ***Greenfield v. Philles Records Inc.*, 98 N.Y.2d 562, 750 N.Y.S.2d 565 (2002)**: We obtained a landmark contract and intellectual property law ruling on behalf of record producer Phil Spector and other defendants against royalty claims by the former group The Ronettes. In a precedent-setting opinion, Pryor Cashman achieved an extraordinary result for commercial entities doing business in New York. The state's highest court unanimously reversed a lower court's award that significantly impaired the rights of owners of property and adopted the rule advocated by Pryor Cashman, ensuring broad rights of exploitation for property owners. The court below had found that an owner of intellectual property did not have the right to exploit its property for any purpose not specifically authorized. On appeal, we argued that a party obtaining ownership of property through a contract has the absolute and unrestricted right to use that property in any way it chooses, subject only to express contractual limitations on such use. The N.Y. Court of Appeals agreed, placing the burden on a grantor to expressly reserve all rights of exploitation not being granted and ruling that the parties' agreement need not list all uses in which the grantee was permitted to engage. The Court also adopted our argument that a party is entitled only to compensation for uses of property for which an agreement expressly provides compensation and that no compensation is due for uses that are not specifically compensable by the agreement. The result obtained by Pryor Cashman reversed a line of decisions holding that an owner of property could not exploit its property in any manner not specifically authorized by the agreement transferring ownership and that a transferring party had the right to compensation for any uses of the property not specifically authorized in the agreement.
- ***Interactive Holdings Corp. v. Paxson Communications Inc.* (S.D.N.Y. 2000) and *National Casualty Co. v. Paxson*, 304 A.D.2d 391, 757 N.Y.S.2d 549 (1st Dep't 2003)**: In 1999, Interactive instituted a copyright and unfair competition litigation against Paxson seeking several million dollars in damages. At that time, Paxson was represented by a large nationwide law firm. After several months of extremely costly litigation, Paxson, whose insurance company, National, had refused to indemnify it, replaced its counsel with our firm. Within one month of being retained, we settled the litigation for \$50,000 and then pursued the insurance company in state court for reimbursement of all amounts paid by Paxson, both for legal fees and settlement. Although the N.Y. Supreme Court granted the insurance company summary judgment, we appealed and the decision was unanimously reversed by the Appellate Division in 2003. Paxson ultimately recovered over \$500,000, which represented all legal fees paid by it in both the underlying and insurance litigation, the \$50,000 it had paid to settle the underlying case, and interest on both amounts.
- ***JMS Entertainment LLC v. Paula Abdul and Shut Up And Dance Productions Inc.* (N.Y. Supreme Court)**: We represented Paula Abdul in an action brought against her by a DVD producer claiming she had breached an agreement to participate in the making of a video about how to be a star.
- ***Koal Industries v. Asland, S.A.*, 808 F. Supp. 1143 (S.D.N.Y. 1992)**: We successfully prosecuted securities and common law fraud and RICO claims against a multinational company and achieved global settlement of all disputes between the parties in multiple litigations and venues.
- ***Leifer v. Castle Rock* (N.Y. Supreme Court)**: We obtained summary judgment dismissing plaintiff's idea misappropriation, breach of fiduciary duty and contract claims concerning a *Seinfeld* episode against the producers and writers of the show, based on the plaintiff's disclosure of an idea to one of the writers.

- ***Mar-Lyon USA v. Enor Corp.* (U.S. District Court for the Southern District of N.Y.):** We successfully prosecuted a breach of contract claim on behalf of world famous hockey player Mark Messier relating to the use of his image on trading cards.
- ***Marvel Enterprises v. Universal Studios* (AAA – N.Y.):** In this AAA arbitration, Marvel sought over \$50 million in damages from our client Universal Studios based upon Universal’s alleged breach of a contract pursuant to which it was obligated to include Marvel elements in marketing exposure relating to Universal’s two theme parks in Orlando, Fla. After 10 days of hearings and the introduction of hundreds of thousands of documents and other materials, including videotapes prepared especially for the hearings, the panel denied Marvel’s claims in their entirety.
- ***McAndrews & Forbes v. Drexel Burnham Lambert* (N.Y. Supreme Court):** We successfully obtained an order of attachment against defendant’s assets.
- ***Morris v. Castle Rock Entertainment*, 246 F. Supp.2d 290 (S.D.N.Y. 2003):** In a suit brought by two screenwriters alleging that they were entitled to credit in connection with the movie *The American President* and the television show *The West Wing*, Pryor Cashman, representing Castle Rock Entertainment Inc., Aaron Sorkin and Rob Reiner, among others, successfully moved to dismiss the complaint in its entirety with prejudice. The Court ruled in favor of the defendants on all claims, including copyright infringement, unfair competition, breach of contract, fraud and conspiracy to defraud.
- ***New Line v. Miramax* (U.S. District Court for the Southern District of N.Y.):** Pryor Cashman, on behalf of New Line, sought a preliminary injunction concerning the release schedule of Jackie Chan films in violation of the parties’ agreement. The matter was settled successfully prior to trial.
- ***Ranney v. Cashel Management Co.* (U.S. District Court for the Northern District of Ohio):** In this federal action and eight related state-court actions filed in late 2000, our clients, directors of a Connecticut corporation, were accused of, *inter alia*, fraud, RICO violations and breach of federal and state securities laws. The case arose out of an \$80 million multistate stock and debenture fraud that resulted in substantial prison terms for a number of defendants, including the corporation’s president/chief executive officer, and resulted in bankruptcy for the company. After amassing and analyzing a database of nearly one million documents over the next year, during which time the Enron scandal inflamed public opinion, Pryor Cashman successfully moved for dismissal of the action. The dismissal of the lead case led to a settlement incorporating the novel concept of a “channeling injunction,” in which the U.S. Bankruptcy Court in Connecticut approved a liquidating plan of reorganization containing a permanent injunction against any and all future actions against the directors relating to the case.
- ***Sagittarius, 112 v. Evergreen* (N.Y. Supreme Court):** We represented plaintiffs who sought in excess of \$7 million in damages for breach of contract and breach of covenant of good faith and fair dealing, arising from the wrongful termination of a broadcasting contract for the Howard Stern Show in Chicago. A settlement was reached immediately prior to a jury trial.
- ***SMD Capital Corp. v. The Diversified Group Inc.* (N.Y. Supreme Court):** We successfully defended The Diversified Group Inc., a marketer and developer of tax-saving strategies, in a jury trial. In the action, SMD Capital Corp. and its principal sought \$3.75 million in fees from Diversified as compensation for the alleged introduction to Diversified of two accounting firms that referred clients to Diversified. After three days of trial, the jury found unanimously against the plaintiffs on their oral contract claim and awarded quantum merit damages to the plaintiffs of less than \$3,500.

- ***Spectrum Int'l Holdings, Inc. v. Joyce Int'l Inc.*, 273 A.D.2d 84, 709 N.Y.S.2d 815 (1st Dep't 2000)**: We successfully defended a multimillion dollar contract claim brought against our client and obtained summary judgment on statute of limitations grounds. When plaintiff appealed, Pryor Cashman briefed and argued the appeal and the dismissal was upheld by the Appellate Division.
- ***Stone v. Bard* (U.S. District Court for the Southern District of N.Y.)**: Pryor Cashman represented world-renowned urologists as plaintiffs in this breach of contract and fraud action involving proceeds from the sale of their medical program for treating prostate cancer. During the mid-1990s, plaintiffs, along with investors in their work, instituted a program to develop an improved treatment for prostate cancer. Plaintiffs sold their program to the company's subsidiary and alleged in the litigation, *inter alia*, that the company and its subsidiary breached the acquisition agreement. In December 2003, after a five-week trial, Pryor Cashman obtained a \$58 million unanimous jury verdict against defendants, which was the fourth largest jury verdict in New York and the 30th largest in the U.S. for 2003. The litigation settled prior to appeal.
- ***Tibbett & Britten Group v. Safeway* (JAMS – San Francisco)**: In this JAMS arbitration, our client, Tibbett and Britten Group, formerly one of the world's largest providers of logistics services, sought \$25 million for services provided and expenses incurred in providing services to Safeway during a lengthy labor strike in several Western states. After a six week trial during which time we put on our client's case through the introduction of over 1,000 exhibits, a dozen witnesses and two key videotapes about the strike and the operation of the warehouse –created especially for the case – the matter was successfully settled in our client's favor.
- ***Triton Sports v. Roller Hockey International* (U.S. District Court for the Southern District of N.Y.)**: We successfully prosecuted fraud and franchise violations case against a new sports league and obtained a refund of all fees paid by our client to the league.
- ***Zink v. Mark Goodson Productions* (N.Y. Supreme Court) (unreported decision), *aff'd*, 261 A.D.2d 105, 689 N.Y.S.2d 87 (1st Dep't 1999)**: Pryor Cashman obtained summary judgment on behalf of its client, resulting in the dismissal of multimillion dollar tortious interference claims asserted against it relating to a game show host. We also handled the appeal brought by plaintiff and were successful in having our lower court victory upheld.