[FR] TF1 International Penalised Heavily for Failing to Distribute a Film by Spike Lee

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“Miracle at St Anna”, the film by Spike Lee first shown in the USA in September 2008, has not had an international career, and for good reason. In October 2007 the production company On My Own had granted TF1 International the exclusive right to exploit and distribute the film worldwide except in the USA, Canada and Italy. In return, TF1 International undertook to pay it an advance of USD 11 million: 5% to be paid at the time of signing the agreement (“deal memo”) and 95% on acceptance of delivery of all the film material. One year later, however, as the film - which tells the story of four black American soldiers during the Second World War - was reaching the final stage of production, TF1 International suspended its exploitation and distribution, claiming that the version it was being offered did not correspond to what it had been promised. There was some dispute among the co-contracting parties as to the length of the film, the content of the “long” and “short” versions, delivery, and payment of the amounts due in performance of the “deal memo”. The director and his producer then had TF1 International summoned on grounds of violation of its contractual obligations, calling for the contract to be declared terminated, solely as a result of the distributor’s action, and for the payment of damages in compensation for the financial and moral prejudice they had suffered.

In its judgment delivered on 21 June 2011, the regional court in Paris upheld these claims. In the light of the various preparatory stages for the film, the court found that by abstaining from contesting the duration of the film, of which it had had knowledge for more than three months, and at the same time carrying out positive activities to produce, promote and market the “long” version of the film, lasting 2 hours and 35 minutes, TF1 International had knowingly accepted the said version and renounced its complaint that the duration of the showing as provided for in the 2007 “deal memo” had been exceeded. As a result the distributor could not call for a “short version”. The court found that since at the end of 2008 the production company had delivered all the film material listed in the “deal memo” for a version of the film that complied with the approved screenplay and a duration known and accepted by TF1 International, the company could not then invoke any contractual default on the part of the applicant production company, nor validly refuse to accept delivery of the film. It had, on the contrary, failed in its contractual obligations by not paying the recoverable advance of USD 11 million and by having suspended performance of its obligations. The court therefore pronounced the contract terminated, with TF1

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International exclusively in the wrong. In the light of the box-office figures achieved by the film in the USA, the amount of pre-sales that TF1 could have achieved if it had not failed in its contractual obligations (EUR 30 million in the rest of the world), expenditure incurred by TF1 International for marketing the film, the number of cinema theatre tickets that could have been sold compared with expenditure on distribution (1 million tickets for EUR 780,000 in distribution expenditure), the minimum sale price for TV sales laid down in the “deal memo”, and the recoverable advance of USD 11 million that TF1 was to pay, the court calculated the operating losses suffered by the production company as a result of TF1 International’s failure to perform its contractual obligations at EUR 20 million. It also awarded EUR 1.5 million to Spike Lee, EUR 200,000 to the co-author of the screenplay, and EUR 1 million to the producer in compensation for the moral prejudice suffered by each. The bank BNP Paribas, for its part, was awarded USD 11 million (plus interest) in respect of the recoverable advance provided for in the “deal memo”. In all, TF1 International has been ordered to pay EUR 42 million. On 25 July 2011 the parties announced that they had reached an out-of-court settlement of their difference, but no details have been revealed.

TGI de Paris (3e ch., 1re sect.), 21 juin 2011, J. Lee alias Spike Lee, On my ownProduzioni cinematografiche et a. c. TF1 International et BNP Paribas

Regional court of Paris (3rd chamber, 1st section), 21 June 2011, J. Lee alias Spike Lee, On my ownProduzioni cinematografiche et al. v TF1 International and BNP Paribas

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