[FR] Lawfulness of Clause in Contract for Production of a Film Authorising its Termination on the Grounds of Failure to Obtain Financing

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An unusual decision by the court of appeal in Paris on 16 March 2012 deserves mention, in that it gives details of the parameters of the obligation to use incumbent on the producer of an audiovisual work as defined in Article L. 132-27 of the French Intellectual Property Code (Code de la Propriété Intellectuelle - CPI), and more specifically its reference to an “obligation of production”. The actual production of a film does indeed depend on the possibility of the producer finding the necessary financing.

In the case at issue, two directors had been entrusted with producing a full-length animated film adaptation of the musical tale “Piccolo, Saxo et Compagnie”, and had signed a contract ceding their rights as writer-directors to a production company. The contract was suspended the following year because of financial difficulties alleged by the latter. Despite the suspension, the producer signed a separate contract ceding copyright with one of the writer-directors covering a set of graphic creations. Six months later, the production company informed the writers that the project was definitively dropped and that the contract ceding their rights was terminated. Four years later, however, the film “Piccolo, Saxo et Compagnie”, produced with the intervention of two other co-producers, was being shown in cinemas. The directors therefore summoned not only the co-writers of the audiovisual work but also the production companies on the grounds of infringement of copyright, failure to observe the obligations of good faith and contractual fairness, and the abusive termination of their contracts.

The appellant parties claimed mainly that the clause in their writers’ contract according to which it could be terminated “if the producer was unable to obtain the necessary financing to cover the cost of the film and start production” was void because it was potestative. (Article 1174 of the French Civil Code indeed provides that “An obligation is void where it was contracted subject to a potestative condition on the part of the one who binds himself.”) They claimed that the termination was founded on fallacious grounds, as no proof was presented of the alleged impossibility of sourcing finance to cover the cost of the film up to the production stage. The court of appeal found that while a purely potestative condition was void where the performance of the obligation did not depend on the desire of just one of the contracting parties, there was no such condition in the case at issue, inasmuch as the entire financing of the film was not

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dependent on the production company summoned to appear in court but on a third party it had to convince to provide support. The court analysed in detail the chronology of the facts and reached the conclusion that the producer, despite the efforts made, had not been able to obtain the financing necessary for covering the cost of producing the film as it had been developed, and that no proof had been provided in either court of the existence of the alleged fraudulent manoeuvring. The termination of the writer-directors' contracts was therefore not abusive. One of the appellant parties who had also signed a separate contract covering all the graphic creations also claimed that the termination of the writer-director contract resulted in the termination of the contract covering the graphic elements. The Court upheld the judgment in its rejection of this claim, considering that the aforementioned contracts were legally independent and did not have the same object.

Cour d'appel de Paris (pôle 5, ch. 2), 16 mars 2012 - Olivier B. et Laurent B. c. Haut et Court et a.

Court of appeal of Paris (centre 5, chamber. 2), 16 March 2012 - Olivier B. and Laurent B. v. Haut et Court et al.

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