[FR] Court Re-Assesses Financing for Co-Producers of a Film

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A company co-producing full-length films that signed a contract with two executive producers for the co-production of the film Sans Arme, Ni Haine, Ni Violence, which came out in 2008, has brought court proceedings against the executive producers, claiming that they infringed the provisions of the contract by failing to keep to the budget, the financing schedule and even the scenario for the film as set out in the contract. The company alleged that the executive producers had submitted an excessively high budget in order to obtain more financing, and had allowed themselves remuneration very much in excess of the amount that had been agreed. By seeking to make savings, to their sole advantage, the executive producers had had a substantially adverse effect on the scenario, and the final film was not what had originally been agreed. The result did not correspond to what the company expected on the basis of the original budget and its own investment, and it therefore claimed compensation for the prejudice suffered.

The commercial court noted that the co-production contract signed by the parties in the case referred to a forecast budget of EUR 10.8 million, with the executive producers contributing EUR 4.1 million, i.e. 63% of the financing requirement, taking into account the contribution made by the distributors, and indicated that "no change may be made to the forecast budget without the joint agreement of the parties". The final cost of the film was in fact EUR 7.4 million, with the executive producers contributing 26% of the financing requirement. Closer analysis of this final cost showed that personnel charges in respect of the executive producer and the line producer amounted to EUR 1.2 million, whereas the corresponding amount in the forecast budget was EUR 670,000, and that this increase of over 84% had not been the subject of any agreement between the parties. The forecast budget and the final financing schedule were therefore considerably out of step with the balance agreed in the contract, to the advantage of the executive producers. In the absence of any elements proving that the applicant co-production company would have agreed to maintain its financing unchanged despite the lower budget and the reduced contribution from the producers, the court found that the respective amounts of financing contributed by the parties should be recalculated on the basis of the actual cost. To maintain the original balance of the financing agreed by the parties, and in view of the actual cost of the film, the applicant company should have contributed EUR 687,000, not EUR 1.7 million. The court therefore ordered the defendant

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executive producers to pay back the difference of EUR 1 million to the applicant. The court rejected the application for damages for loss of opportunity however, as it felt nothing had been shown in court to establish that the lower budget for the film would have had a direct impact on its income. Similarly, the alleged failings regarding the scenario, which concerned the form rather than the content of the film, and according to the co-production contract involved choices on the part of the executive producers, did not constitute violation of the contract. Lastly, the court acceded to the request for its decision to be published in four newspapers (daily newspapers and specialised cinema press).

Tribunal de commerce de Paris (8e ch. contentieuse), 5 février 2013 - SA Studio 37 c. Vertigo Productions et Elia Films

Commercial court of Paris (8th chamber, for disputed cases), 5 February 2013 - Studio 37 S.A. v. Vertigo Productions and Elia Films

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