[FR] Court finds alleged victim of screenplay piracy guilty of abuse of process against authors and producers of ‘The Artist’

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A French scriptwriter claimed that he realised, when viewing the trailer for the film ‘The Artist’, released in October 2011, that the key sequences of a screenplay he had written had been used. The director had written a project for a silent cinema film in black and white, entitled ‘Timidity, la symphonie du Petit homme’ in the form of a usable version, first in 2000 and then in 2006. He had a summons for infringement of the copyright protection for the screenplay of his film issued against the author and the director of the film ‘The Artist’, which won several awards the following year at the Academy Awards and César ceremonies, and at the Cannes Film Festival, together with the film’s producers.

The main point at issue before the regional court concerned proof of the anteriority of the applicant’s rights. The defendants claimed there was no certain date on the screenplays presented to the Court (one in 2006 and the other in 2008, according to the applicant, who claimed the anteriority of his screenplay, on which he claimed to have worked for more than ten years). By definition, piracy supposes the existence of an original creation prior to the offending work, and the applicant’s interest in taking legal action is conditional on demonstrating such anteriority. Thus the burden of proof is on the applicant to identify the work and determine the exact date of its creation. In the present case, the applicant based his claim on the production of two screenplay handouts, testimony, and attestations from various cinema technicians, and correspondence in relation to financing for the applicant’s ‘Timidity’ project. After analysing these elements, the Court concluded that none of the documents made it possible to determine the content of the projects communicated by the applicant, or the exact date of the creation of the screenplays submitted by the applicant. Indeed the earliest date the Court could ascertain was seven months after ‘The Artist’ was released. The applicant, unable to establish the anteriority of any putative moral or pecuniary rights, was found to have no interest in taking legal action for infringement of copyright, and his claims were judged totally inadmissible.

The defendants had brought a counterclaim on the grounds of abuse of process, as they felt the applicant had made exorbitant claims (over five million Euros in compensation for the alleged prejudice suffered) since there could be no mistake over the extent of his rights in view of the absence of significant similarities between his work and the film ‘The Artist’. The Court therefore examined the

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matter more closely. It noted that the concept of producing a silent film in black and white, even at the end of the 20th century, could not be protected by copyright, and that the works at issue differed in terms of plot, construction, style, ambience, the nature of their intended tribute to cinema, characters, and treatment of situations. Their only similarity lay in ideas that could not be appropriated. The Court also stressed the applicant's biased presentation of the facts, having failed to demonstrate the principle of the alleged prejudice suffered and manifesting culpable levity in exercising his right to take legal action. The applicant was further found at fault for having widely advertised the existence of the Court case, both in France and elsewhere, by presenting the alleged infringement of copyright as a certain fact. Furthermore, the applicant was held to be at fault for denigrating the film's director and producers, in such a way that there could be no doubt that the intention was to cause them offence. The Court found that this had caused the defendants prejudice by damaging their reputations, and therefore ordered the applicant to pay EUR 18 000 to the producers and the executive producer of 'The Artist'.

TGI de Paris (3e ch. 1re sect.), 25 février 2016 - C. Valdenaire c/ M. Hazanavicius, La classe américaine et a.

Regional court in Paris (3rd chamber, 1st section), 25 February 2016 - C. Valdenaire v. M. Hazanavicius ('La Classe Américaine') and others

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