SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

PETER BRENNAN, an individual, and PETER BRENNAN PRODUCTIONS, INC., a New York corporation,

Plaintiffs,

vs.

BIG TICKET PICTURES, INC., a Delaware corporation, VIACOM, INC., a Delaware corporation, PARAMOUNT TELEVISION GROUP, an entity of unknown form, SPELLING ENTERTAINMENT GROUP, INC., a New York corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO. BC 240430

[Honorable Richard Montes]

ORDER re: MOTION OF VIACOM INC., PARAMOUNT TELEVISION GROUP, AND SPELLING ENTERTAINMENT GROUP INC. FOR SUMMARY JUDGMENT ON PLAINTIFFS' FOURTH CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH CONTRACT

Date: September 20, 2002
Time: 1:30 p.m.
Dept: 34

The motion of defendants Viacom Inc. ("Viacom"), Paramount Television Group ("PTG"), and Spelling Entertainment Group Inc. ("Spelling") (collectively, the "Third-Party Defendants"), for summary judgment against plaintiffs Peter Brennan ("Brennan") and Peter Brennan Productions, Inc. ("PBP") (collectively, "Plaintiffs") on the fourth cause of action in Plaintiffs' Second Amended Complaint for intentional interference with contract came on regularly for hearing before this Court in Department No. 34. Richard B. Kendall and Michael H. Strub, Jr., of Irell & Manella LLP appeared as attorneys for the Third-Party Defendants, and Michael J. Plonsker, David S. Gubman, and Stacy W. Harrison of Alschuler Grossman Stein & Kahan LLP appeared as attorneys for Plaintiffs.

After full consideration of the evidence and points and authorities and the separate statement submitted by both parties, and oral arguments of counsel, it appears and the Court finds that the following facts are not in dispute:

Plaintiff Peter Brennan Productions, Inc. f/s/o Peter Brennan [hereinafter called "Brennan"] entered into a contract with Big Ticket Pictures, Inc., a subsidiary of Spelling Entertainment Group, Inc. on October 11, 1995, with respect to the show "Her Honor" (later called "Judge Judy"). [Exhibit 8 to Declaration of Michael Strub, Jr. in Support of Big Ticket's Motion for Summary Judgment.] A few weeks later, Judge Judith Sheindlin signed her contract with Big Ticket for the same show. [Exhibit 1 to Declaration of Michael Strub., Jr.]

Under Brennan's contract, plaintiff was to receive compensation based on a series sales bonus for year 1 and year 2; a fee on the series (per week payment) and profits participation. Paragraph 8 of the contract, the provision in dispute, states:

> 12 1/2 % of 100% of defined proceeds (BTP's standard definition to be negotiated in good faith on a favored nations basis except with respect to the merchandising provision of Judge Judith Sheindlin) in perpetuity for all shows that Artists renders services on. In the even that Artists' option is not picked up. Artist will receive ½ of his proportionate amount of defined proceeds for the life of the series.
>
> In the event Artist is rendering executive producer services in Year 2 and other profit participants are not rendering services, we will discuss additional profits to Artist in good faith.

Judge Judith Sheindlin in 1995 also received fixed compensation, merchandising and profit participation. Under this agreement, BTP agreed to pay her 15% of BTP's "standard definition" labeled "Defined Proceeds" (See Exh. P to Plonsker Motion Decl.):

> Artist shall also be paid Contingent Compensation in the amount equal to 15% of one hundred percent (100%) of the "Defined Proceeds," if any, derived from the Programs of the Series in which Artist is host. "Defined Proceeds" shall be defined, computed or otherwise accounted pursuant to Exhibit I . . . .

Plaintiffs Brennan acknowledged during argument that BTP's standard definition of defined proceeds is contained in Exhibit I to Sheindlin's 1995 contract. Plaintiff Brennan also acknowledged receiving a copy of Exhibit I. (Weiner Declaration).

Plaintiffs Brennan states that disparity between their 12 ½ % defined proceeds compensation and Judge Sheindlin's 15% defined proceeds compensation is not the object of this suit. Rather, it is the violation of the favored nations provision contained in paragraph 8 of the contract, when defendants renegotiated and improved Judge Sheindlin's formula for compensation without giving plaintiff compensation based upon the same formulation and not negotiated with plaintiff regarding said compensation.[1]

[1] The "favored nations" clause of paragraph 8 would seem to compel this conclusion since the reference to Judge Sheindlin indicates that the parties contemplated the Sheindlin contract to be the benchmark for the definition in question.

In 1999, Big Ticket and Judge Sheindlin renegotiated her contract (Exhibit 2 to Straub Declaration). The Sheindlin Agreement was modified to improve Sheindlin's profit definition by giving Sheindlin the benefit of the greater of two calculations: (a) 7 ½% of an improved calculation labeled "Adjusted Gross Receipts" as an advance against (b) 15% of an improved calculation that BTP continued to label "Defined Proceeds" (See Exh. Q to Plonsker Motion Decl.) Judge Sheindlin's renegotiated definition of defined proceeds is the most favorable definition of defined proceeds, from the standpoint of the profit participant, that anyone on the Judge Judy show receives

Big Ticket has submitted a declaration from Roger Kirman, Big Ticket's former Senior Vice President of Business Affairs, in which Mr. Kirman testified that following the renegotiation of Judge Sheindlin's agreement, he made the decision that Brennan would be paid contingent compensation based on Judge Sheindlin's defined proceeds definition (and not her adjusted gross receipts definition). Mr. Kirman testified that the Third-Party Defendants did not instruct him or anyone else at Big Ticket in how to interpret the contract, how to pay Brennan, how to account to Brennan, or what definition to use to calculate his contingent compensation. Mr. Kirman further testified that no one within the Third-Party Defendants told him or anyone at Big Ticket not to pay Brennan pursuant to Judge Sheindlin's adjusted gross receipts definition. Plaintiffs have already deposed Mr. Kirman, and Plaintiffs have not shown that the testimony in his declaration is inconsistent with his deposition testimony. In addition, Plaintiffs have proffered no relevant evidence to dispute Mr. Kirman's testimony.

Based on the foregoing undisputed facts, the Court makes the following legal conclusions:

A motion for summary judgment or summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Cal. Civ. Proc. Code § 437c; see Aguilar v. Atlantic Richfield Co. (2001) 25 Cal. 4th 826, 850.

The elements of a claim for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption; and (5) resulting damage. Pacific Gas & Elec. Co. v. Bear Stearns & Co., (1990) 50 Cal. 3d 1118, 1126.

To prevail on their claim for intentional interference, Plaintiffs must prove that Third-Party Defendants Viacom, Spelling, or PTG intentionally caused Big Ticket to breach its agreement with Brennan and that but for that interference, the agreement would have been performed. See Eltolad Music, Inc. v. April Music, Inc., (1983) 139 Cal. App. 3d 697, 706 (holding that the trial court had improperly instructed the jury "that plaintiff had the obligation to prove that defendant CBS was 'a' moving cause of the contract breach" and that, instead, the "plaintiff had the obligation to prove that defendant was 'the' moving cause" of the contract breach); Dryden v. Tri-Valley Growers, (1977) 65 Cal. App. 3d 990, 997; Beckner v. Sears, Roebuck & Co., (1970) 4 Cal. App. 3d 504, 507.

It is undisputed, however, that that Big Ticket decided what definition to give Plaintiffs and that the Third-Party Defendants were not involved. Consequently, the Third-Party Defendants did not cause Big Ticket to breach an agreement with Plaintiffs.

Plaintiffs offer several theories regarding the Third-Party Defendants, but all are irrelevant to the causation issue. Plaintiffs' primary argument is that because Spelling and Paramount, rather than Big Ticket, issued profit participation statements and checks to Brennan, Spelling and Paramount caused Big Ticket to breach the agreement. Plaintiffs' argument might be appropriate i they were trying to pierce the corporate veil to hold the Third-Party Defendants directly liable for the breach. But that is not Plaintiffs' claim. Plaintiffs' claim is that one party Big Ticket breached the agreement, and that the Third-Party Defendants are separately liable for intentionally causing the breach that Big Ticket committed. What is missing from Plaintiffs' opposition is any evidence that the Third-Party Defendants had any impact on Big Ticket's performance of the agreement, or that Big Ticket would have paid Brennan adjusted gross receipts but for the conduct of the Third-Party Defendants. See Dryden, supra, 65 Cal. App. 3d at 997 (party to a contract cannot be liable for interfering with the contract).

Another argument advanced by Plaintiffs is that the Brennan Agreement was an installmen contract and that each payment and calculation of Brennan's profits under the Agreement was an independent breach of the contract for which the Third-Party Defendants are liable. Again, Plaintiffs' argument misses the point. Plaintiffs must show that the Third-Party Defendants cause Big Ticket to take some action that breached the contract. The fact that the Third-Party Defendant themselves may have taken some action that independently breached the Agreement is not evidence that Big Ticket would have performed the Agreement but for the interference by the Third-Party Defendants. Moreover, the Third-Party Defendants cannot be liable for interference for failing to reverse or offset an alleged breach by Big Ticket - the party to the contract. See Dryden v. Tri-Valley Growers, (1977) 65 Cal. App. 3d 990, 996-997.

Plaintiffs also argue that Mr. Kirman's declaration does not state that he communicated h decision to Spelling, Paramount, or Viacom before the accounting was compiled for Brennan's participation statements, and therefore, Mr. Kirman and Big Ticket could not be responsible for t alleged breach. Plaintiffs' argument is inconsistent with the fact that they are alleging that Big Ticket breached the agreement, not the Third-Party Defendants. Likewise, Plaintiffs are alleging that the Third-Party Defendants interfered with Big Ticket's performance of the contract, not the other way around. Thus, to prevail on their intentional interference claim against the Third-Party Defendants, Plaintiffs would need to show that the Third-Party Defendants engaged in some affirmative action, which caused or facilitated actions on the part of Big Ticket which constitute breach of a duty owed to the plaintiff. Plaintiffs have not made this showing.

As a final argument, Plaintiffs contend that the Court should continue this motion to perm them additional discovery. If a party opposes summary judgment on the grounds that further discovery would reveal evidence that would defeat the motion, then the party must specify what further discovery would lead to what facts, and why those facts are essential to justify opposition See Scott v. CIBA Vision Corp., (1995) 38 Cal. App. 4th 307, 325-326. If the facts or evidence sought are irrelevant, a continuance should be denied. See Cal. Code Civ. Proc. ' 437c(h); FSR Brokerage, Inc. v. Superior Court (Blanco), (1995) 35 Cal. App. 4th 69, 75-76 (denial of continuance under 437c(h) proper where requested discovery had no relevance to the dispositive material fact upon which summary motion was based); Allyson v. Dep't of Trans., (1997) 53 Ca App. 4th 1304, 1321 (same). None of the categories of fact or evidence enumerated by Plaintiff are relevant to establishing but-for causation, because none of them even purport to be of the kin that would dispute that Big Ticket would never have given adjusted gross receipts to Brennan bu

for the influence of the Third-Party Defendants. For this reason, the request for a continuance is denied.

IT IS THEREFORE ORDERED that the said motion for summary judgment be, and hereby is, GRANTED, and the claims set forth by Plaintiffs against Third-Party Defendants in their fourth cause of action are DISMISSED in their entirety WITH PREJUDICE.

Dated: September 30, 2002

Hon. Richard Montes
Judge of the Superior Court