

TeeVee Toons, Inc. v Prudential Securities Credit Corp., LLC

2005 NY Slip Op 30200(U)

September 28, 2005

Supreme Court, New York County

Docket Number: 0603116/2002

Judge: Herman Cahn

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collateralized assets (*affd* 5 AD3d 226 [1st Dept 2004]). The assets, consisting of copyrighted and trademarked musical works, have remained in Prudential’s possession, and under its supervision and control, since that time. No public or private sale of the assets has occurred.

The TVT entities commenced this action, claiming various breaches by Prudential of the parties’ February 19, 1999, loan-related agreements, and related causes of action. By decision and order dated October 3, 2003, the court granted Prudential’s motion to dismiss the original complaint with leave to replead one surviving cause of action, alleging that Prudential breached Loan Agreement § 2.9 by failing to remit certain Cash Collateral and Lockbox deposits to the TVT entities (*affd* 8 AD3d 134 [1st Dept 2004]).

The TVT entities served an amended complaint repleading the foregoing cause of action, as a second cause of action, and adding a first which essentially asserts that Prudential has no right to retain the collateral indefinitely without any foreseeable plan to dispose of it, in a commercially reasonable manner, and, thereby, extinguish the debt to the extent of the proceeds on such disposition. The claim is succinctly put in paragraph 10 of the amended complaint (Gutekunst Aff. Ex. 1): the UCC “duty to act in a commercially reasonable manner requires Prudential to proceed with the required disposition without undue delay.”

Prudential moved (seq. no. 008) to dismiss the first cause of action. The essence of Prudential’s position was summed up in its counsel’s letter to plaintiffs’ counsel, dated November 19, 2003: “Prudential may dispose of the Collateral at any time and in any way it sees fit” (Riely Aff. [motion seq. no. 008] Ex. D at 2). By decision and order dated September 14, 2005 (the “Sept. 14th Order”), the court denied the motion, holding, *inter alia*, that:

Prudential may not dispose of the Collateral at any time and in any way it sees fit.

Modern commercial law places certain responsibilities on the creditor and vests the debtor with certain rights vis-a-vis the collateral, even post-default and seizure. Prudential has been in possession of the collateral for nearly two years. During this time, it has been exploiting those assets, lawfully, as permitted by the court's decision and order in the companion case, dated June 7, 2004 (*aff'd* 16 AD3d 192 [1st Dept 2005]). However, it must proceed to liquidate or manage the assets in a reasonable time.

(Sept. 14th Order at 4 [footnotes omitted].)

The Document Demands:

Plaintiffs served a demand for documents, dated July 9, 2004, containing nine specific demands (Notice of Motion Ex. B). The first five relate to the first cause of action of the amended complaint, alleging failure to dispose of the collateral in a commercially reasonable manner, which the Sept. 14th Order sustained. They read as follows:

1. All Documents or Communications concerning or relating to any actual or contemplated sale, assignment, lease, or any other disposition of the Assets by Prudential, including but not limited to all correspondence, term sheets, and draft agreements.
2. All Documents or Communications concerning or relating to any effort by Prudential to hire a third party to manage the Assets.
3. All Documents sufficient to show any and all steps taken by Prudential to exploit the Assets from September 23, 2003, to the present.
4. All Documents or Communications concerning or relating to the management, distribution, manufacture, licensing, or other exploitation of the Assets, including but not limited to all correspondence, term sheets, and draft agreements.
5. All Documents or Communications concerning any disposition of the Assets, including but not limited to all correspondence, term sheets, and draft agreements.

Prudential served objections and responses, dated August 6, 2004 (Notice of Motion Ex. C). In addition to objections of overbreadth and burdensomeness, it objected to the foregoing demands on the primary ground that they are "not relevant to any cause of action, issue

or defense remaining in this action and is not material or necessary to the prosecution or defense of this action” (*id.*, at 3-5).¹ The TVT entities now move to compel compliance with the foregoing demands.

Discussion:

“There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof” (CPLR 3101 [a].) “The words, ‘material and necessary,’ are . . . to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason.” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968].)

Prudential’s objections were interposed prior to this court’s September 14, 2005, denial of its related motion to dismiss the first cause of action. The Sept. 14th Order upheld that cause of action, subject to proof. The Order held that Prudential does not possess an unfettered right to hold the Collateral, indefinitely, without any stated plan for its final disposition. While the court acknowledged Prudential’s discretion in preparing or processing the Collateral, pre-disposition (Sept. 14th Order at 5), it also recognized TVT’s competing rights under UCC Article 9 (*id.*, *passim*).

In accordance with the Sept. 14th Order, the court finds the document demands relevant to the issue of Prudential’s commercial reasonableness, raised in the first cause of action. “Every aspect of a disposition of collateral, including the method, manner, time, place,

¹ As to Demand No. 3, Prudential also objects on the ground of vagueness (Notice of Motion Ex. C at 4).

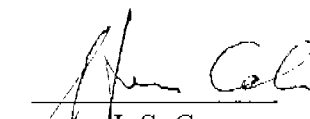
Accordingly, it is

ORDERED that plaintiffs' motion to compel the production of non-privileged documents responsive to the first five demands of their Requests for the Production of Documents and Things, dated July 9, 2004, is granted; and it is further

ORDERED that such production shall occur no later than twenty days from the date of service of notice of entry hereof on defendant's counsel, unless extended by plaintiffs or further order of the court.

Dated: September 28, 2005

ENTER :



J. S. C.