

**Artists Rights Enforcement Corp. v Davis**

2006 NY Slip Op 30224(U)

March 1, 2006

Supreme Court, New York County

Docket Number: 0602260/2005

Judge: Richard B. Lowe

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

RICHARD B. LOWE III

PRESENT.

PART 56

Index Number : 602260/2005

ARTISTS RIGHTS

vs

DAVIS, JOYCE

Sequence Number : 001

SUMMARY JUDGMENT

C

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No


Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

MAR 06 2005 COUNTY CLERK'S OFFICE NEW YORK

Dated: 3/1/2006

  
RICHARD B. LOWE III J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK : IAS PART 56

-----X  
 ARTISTS RIGHTS ENFORCEMENT CORP.,

Plaintiff,

Index No. 602260/2005

- against -

JOYCE DAVIS and VY HIGGINSON,

Defendants.

**DECISION  
 AND ORDER**

-----X  
**RICHARD B. LOWE, III, J.:**

Before the court are cross-motions for summary judgment. The plaintiff moves for summary judgment under the terms of a 1983 contract signed by the late Doris Troy a/k/a Doris Payne (Troy or the "Decedent") which purportedly gives the plaintiff the right to fifty (50%) percent of the proceeds received for the song *Just One Look*. Defendants Joyce Davis (Davis) and Vy Higginson (Higginson) opposes the plaintiff's motion for summary judgment and cross-moves for summary judgment, arguing that, as sole legatees of the Decedent, they are entitled to the proceeds and, as well, aver that the contract signed in 1983 is no longer enforceable. The defendants also seek an accounting.

**BACKGROUND**

The following statement of facts are taken from the parties' Rule 19-A Statement of Material Facts.

This dispute revolves over a 1983 contract signed between Troy and Artists Rights to seek royalties for the song *Just One Look*. Artists Rights is a corporation in the business of pursuing the rights of recording artists and songwriters for a fee. On or about May 27, 1983, Troy entered into an agreement with Artists Rights to aid her in retrieving royalties for the song *Just One Look*. In

return, Artist Rights would receive fifty (50%) percent of the royalties received. As such, as Troy received her royalties, Artists Rights also received its percentage. Artists Rights would send moneys paid to the Decedent with a statement of her share of the income for the previous year for income tax purposes.

In or about 1993, Troy and Artists Rights sold their respective ownership interests in the copyright to *Just One Look* to Careers-BMG Music Publishing (BMG). Under the 1993 contract, BMG, in collecting the royalties, continued to pay to Artists Rights its percentage to the royalties. The Decedent did not terminate either contract during her lifetime, and Artists Rights continued to receive their percentage to the royalties.

Troy died testate on or about February 16, 2004, with Davis and Higginson as Troy's sole heirs. In or about November 2004, the defendants' attorney informed the plaintiff that it had no further right to the proceeds.

Plaintiff brought this action by Summons and Complaint on June 22, 2005 against the defendants, arguing as its sole cause of action a declaration of its rights under the contracts and for the enforcement of the contracts thereto. The defendants, on July 22, 2005, brought counterclaims against the plaintiff, namely for a declaration that the 1983 agreement is null (first and third counterclaims), an accounting (second counterclaim), and a declaration that Artists Rights is an investigator (fourth counterclaim).

### **DISCUSSION**

To obtain summary judgment, the movant must establish its cause of action "sufficiently to warrant the court as a matter of law in directing judgment' in its favor (CPLR 3212 [b]), and it must

“set forth evidence that there is no factual issue” requiring an adjudication on the facts (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]). On the other hand, to defeat a motion for summary judgment the opposing party must “show facts sufficient to require a trial of any issue of fact” (CPLR 3212 [b]). One opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the movant rests its claim; “mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to raise a question of material fact (*A.H.A. Gen. Constr. v New York City Hous. Auth.*, 92 NY2d 20, 33 [1998], quoting *Zuckerman v New York*, 49 NY2d 557, 562 [1980]). Facts are nonetheless viewed in the light most favorable to the non-moving party, and facts of the non-movant are taken as true (*Forrest*, 3 NY3d at 315).

The basic issue here is whether Troy’s heirs are bound by the 1983 agreement signed between the Decedent and Artists Rights. The plaintiff, in its motion for summary judgment, argues that Troy’s heirs are bound by the agreement between Troy and Artists Rights as to the work Artists Rights provided Troy and the proximate results garnered by that work. The defendants, in opposition to the plaintiff’s motion for summary judgment and its own cross-motion for summary judgment, argue that they have a right to terminate the 1983 agreement at a reasonable time where no time limit is given. The defendants also argue that Artists Rights did not have rights under the 1993 agreement because there was no investigation or collection activity as required under the 1983 agreement. Finally, the defendants seek an accounting.

“It is axiomatic that a contract is to be interpreted so as to give effect to the intention of the parties as expressed in the unequivocal language employed” (*Wallace v 600 Partners Co.*, 86 NY2d 543, 548 [1999]; quoting *Breed v Insurance Co.*, 46 NY2d 351, 355 [1978])[internal quotations



payments and Artists Rights would receive its percentage. Furthermore, as expressly provided in the agreement, any sums which “may be realized as a proximate result” of Artists Rights’ work would also be due and owing to the plaintiff. There is nothing vague or ambiguous as to the terms of the agreement. Accordingly, it should be enforced.

The defendants argue that they have a right to terminate the contractual agreement because there is no express term of duration in the contract. Generally, “where the parties have not clearly expressed the duration of a contract, the courts will imply that they intended performance to continue for a reasonable time” (*see Haines v New York*, 41 NY2d 769, 772 [1977]). However, in a contractual relationship, “the undertaking of each promisor in a contract must include any promises which a reasonable person in the position of the promisee would be justified in understanding were included” (*Rowe v Great Atlantic & Pacific Tea Co.*, 46 NY2d 62, 69 [1978], quoting 5 Williston, Contracts § 1293, at 3682 [rev ed 1937]).

Indeed, the 1983 agreement does not provide for any specific date of termination. Nonetheless, the contract specifically provides that Artists Rights would receive 50% of all sums which has been or will be realized as a “proximate result” of its activities (*see Complaint, Ex. 1*). That the plaintiff may continue to receive benefits from royalties investigated and collected by the plaintiff twenty years ago does not change the fact that, under the 1983 agreement, it is entitled to those proceeds. Here, the plaintiff concedes that the obligation regarding the investigation and collection of royalties for Troy ended with the Decedent’s death. As well, the Artists Rights concedes that any royalties secured after the Decedent’s death are not due and owing to the plaintiff. However, that does not change the fact that any results proximately garnered by Artists Rights’ services *prior* to Troy’s death continue after her death. Here, Artists Rights continues to have the

ability to collect on those services it rendered to the Decedent prior to her death. Troy's death does not change this contractual obligation, which continues to bind not only Troy, but also her successors and assigns.

The defendants argue that even if the 1983 agreement is still in effect, it is no longer binding under the 1993 agreement with BMG because the plaintiff neither investigated nor collected pursuant to the terms of the 1983 contract. Further, the defendants aver that because the plaintiff never had copyright privileges, it is not entitled to those proceeds. However, these arguments are not only inapposite, but irrelevant to the underlying 1983 agreement. There is no dispute that Artists Rights aided Troy in her recovery of royalties for the song *Just One Look*. In addition, it was Artists Rights, as Troy's agent, which helped the Decedent renew her copyright to the song *Just One Look* (see Higginson Aff, Ex. 3). While Artists Rights may not have any copyright rights, the fact that Artists Rights acted on behalf of the Decedent to renew her copyright only furthers the argument that it acted on the Decedent's behalf in connection with the "collection of any and all royalties" due the Decedent (see *id.*, ex. 2). Whether Artists Rights had any interest in the copyright is irrelevant, as it aided Troy in collecting her royalties to the song.

Finally, the 1993 agreement with BMG is clear in requiring BMG "to deal directly with Artists Rights . . . in connection with any negotiation regarding [Troy's] right to recapture . . . the U.S. Copyright" (see Complaint, Ex. 2 at 10). As well, it is clear that BMG is obligated to deal with Artists Rights in sending royalty payments, where, after Artists Rights received the payments, it would takes its percentage and remit the rest to the Decedent. Here, the agreement only advances the plaintiff's argument that it was entitled to its percentage of the royalties, since the 1993 contract with BMG was the proximate result of Artists Rights' endeavors to investigate and collect on behalf

of the Decedent. Accordingly, the plaintiff is entitled to the benefits of its endeavors.

In one last argument, defendants Davis and Higginson aver that because Artists Rights is an “investigator,” and because it is not licensed under § 70 of the General Business Law (GBL), the agreements are void as a matter of law. An investigator, as defined by the GBL:

shall mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation, or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire or reward; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America; the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real or personal property; or the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and subcontractors; or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases.

(*Id.* at § 71 [1]). The argument is frivolous at best. The intent of the statute is to protect the public against private investigators’ willful, malicious and wrongful acts (*see Schauder v Weiss*, 88 NYS 2d 317 [Sup Ct 1949], *aff’d* 276 AD 967 [2d Dept 1950], *appeal denied* 276 AD 1022 [2d Dept 1950]). Here, there is no dispute that Artists Rights is neither engaging in business that is willful, malicious, and wrongful, nor is there any suggestion that the plaintiff is engaging in any of the above

acts requiring a license. The plaintiff is not an investigator pursuant to GBL § 71, and, accordingly, does not require a license.

Finally, the defendants request an accounting pursuant to the 1993 agreement. That the defendants may pursue such a route is allowed under the 1993 agreement at their “sole cost and expense” (*see* Complaint, Ex. 2 at 11, § 8 [c] [iii]). Under the 1993 agreement, the plaintiff must provide statements and an accounting to the defendants (*see id.*, Ex. 2 at 11, § 8 [c] [ii]). Here, the plaintiff has fulfilled its obligations pursuant to the agreement by providing such an accounting (*see* Berger Aff, Ex. G, H, I, J). Should the defendants desire to “verify the accuracy of any accounting statement” provided by Artists Rights, they may do so by causing BMG to provide their books and records to a “certified public accountant” for such verification. However, that is between the defendants and BMG, not the defendants and Artists Rights. The defendants may not seek an accounting from a party that does not have the obligation to provide one.

### CONCLUSION

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for summary judgment is granted and it ADJUDGED and DECLARED that the 1983 contract between Artists Rights and Troy and the 1993 agreement with BMG are enforceable and that Artists Rights is entitled to receive royalties attributable to the song *Just One Look* in accordance with the 1983 contract; it is further

ORDERED that the defendants are enjoined from causing or inducing BMG not to pay royalties attributable to the song *Just One Look* to Artists Rights; it is further

ORDERED that the defendants’ cross-motion for summary judgment is granted in favor of

the plaintiff and against the defendants as to all counterclaims; and it is further

ORDERED that the Clerk of the court is directed to enter judgment in favor of the plaintiff, together with costs and disbursements as taxed by the Clerk of the court upon the submission of an appropriate bill of costs.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: March 1, 2006

ENTER:

  
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RICHARD B. LOWE, III, J.S.C.

**FILED**  
MAR 06 2006  
COUNTY CLERK'S OFFICE  
NEW YORK