

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

2006 NY Slip Op 30345(U)

January 10, 2006

Supreme Court, New York County

Docket Number: 0603112/2002

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 49

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PRUDENTIAL SECURITIES CREDIT CORP., LLC, Index No. 603112/02  
INC.,

Plaintiff,

-against-

TEEVEE TOONS, INC., TEEVEE CATALOG  
ENTERPRISES, LLC, TVT MUSIC II, LLC,  
and DUTCHMASTAS II, LLC,

Defendants.

-----X

**CAHN, J.:**

Motion sequence numbers 018 and 019 are consolidated for  
disposition.

Defendants TeeVee Toons, Inc, TVT Catalog Enterprises LLC,  
TVT Music II, LLC, White Rhino Music II, LLC, and Dutchmastas II,  
LLC (collectively "TVT") move pursuant to CPLR 4403 to reject the  
Report and Recommendation of the Special Referee dated May 7,  
2004 (the "Referee's Report"), which recommended that the court  
hold defendants in civil contempt for violation of various  
discovery orders and impose a sanction of \$150,250. Plaintiff  
Prudential Securities Credit Corp. LLC ("Prudential") moves to  
confirm that part of the Referee's Report that recommended a  
finding of contempt, and to modify the report to the extent of  
imposing an increased sanction of \$361,886.25.

The background of this action has been set forth in prior orders of this court, familiarity with which is presumed. As is relevant here, plaintiff made loans to defendants in the amount of \$23,000,000, secured by the rights to certain music titles and exploitation rights. In a series of orders between February and April 2003, this court directed production of documents related to the collateral. In May 2003, this court referred to the Special Referee to hear and report the issue of whether defendant TeeVee Toons acted contumaciously with respect to its production obligations and, if so, the extent of sanctions to be imposed.

Hearings were held before Referee Lowenstein between February 7, 2004 and March 9, 2004. The referee reviewed voluminous documents and heard testimony from eight witnesses, including five attorneys involved with the litigation, TVT's General Manager, its Director of Business and Legal Affairs, and its comptroller. After reviewing the evidence, the Referee issued a lengthy report which concluded as follows, at pages 10 and 11:

The matter of whether defendant TVT has engaged in conduct sufficiently willful and violative of any order of Justice Cahn so as to be contumacious can be gleaned from the conduct of TVT both in its response to oral directions of the court not reduced to formal court orders as well as the court's actual orders. The testimony, evidence and proof adduced at the hearing held before me is sufficiently replete with conduct on the part of TVT which established that TVT did not act to produce documents that the court had July requested them to produce voluntarily without formal court order.

\* \* \*

The fact of intentional willfulness can be discerned not only from TVT's failure to comply with the court's oral directions in 2002 but also from the nature of the production ultimately made. The testimony, proof and evidence adduced at the hearing established that once document production began on February 7, 2003 the plaintiff was compelled to organize the documents produced so that the plaintiff could make use of the relevant matter disclosed.

The fact of willfulness is further seen in the attested to rampant inappropriate classification of documents including matters of public record as "Highly Classified" which caused additional difficulty and delay to the plaintiff in the disclosure process.

\* \* \*

And at page 12:

In view of the foregoing the undersigned concludes that respondent has committed civil contempt by willfully violating Justice Cahn's orders of February 6, 2003, February 7, 2003 and April 1, 2003 in delaying and obstructing the discovery process in this action.

Turning to the question of sanctions, the Special Referee found, at page 13:

In reviewing the testimony, proof and evidence adduced at the hearing the undersigned finds that while substantial counsel fees were incurred by the plaintiff in order to effect discovery in this action, the counsel fees incurred by reason of any contumacious conduct on the part of TVT did not rise to the level of \$361,886.25 as contended by the plaintiff.

The sanction that should be imposed by the court should principally take into account the dilatory conduct of TVT in producing documents and should further take into account the extensive document cataloguing that was required by reason fo the disorganized and inappropriate manner in which documents were produced to the plaintiff.

In reviewing the record adduced at the hearing relative to the value of counsel fees I find that same cannot be accurately gauged based upon the criteria I have set forth above for the imposition of sanctions as per

Judiciary Law §773. I therefor recommend that the level of counsel fees be set in quantum meruit to permit the plaintiff a recovery in the sum of \$150,000.00 as and for counsel fees incurred by reason of the contumacious conduct of TVT in the production of documents in this action [see, Rondinelli v Yabuki, 224 AD2d 404 (2<sup>nd</sup> Dept 1996)].

\* \* \*

In conclusion I recommend that the court impose a sanction of \$150,000 as and for counsel fees incurred by the plaintiff in the action as the result of the TVT's contempt plus a statutory fine of \$250 for a total sanction of \$150,250.00 (Judiciary Law §773).

The Report is confirmed in its entirety without modification. "[I]t is well-established that the report of a referee shall be confirmed whenever the findings contained therein are substantially supported by the record and the referee has clearly defined the issues and resolved matters of credibility" (Kaplan v Einy, 209 AD2d 248, 251 [1<sup>st</sup> Dept 1994]; see, Plaza Funding Corp. v J.C. Dev. Corp., 155 AD2d 298 [1<sup>st</sup> Dept 1989]). The Special Referee's conclusions as to both the finding of contempt and the amount of the sanction were fully justified in view of the evidence before him.

TVT challenges the report primarily on the ground that the Special Referee improperly considered various oral directives of this Court in making the finding of contempt. While it is true that those directives by themselves could not have formed the basis for a contempt finding, their existence (and TVT's knowledge thereof) provides a context in which to evaluate whether the subsequent violations of the relevant written orders

[\* 6]

was deliberate and contumacious. TVT's objection to the amount awarded as unproven also fails. Although the Referee found that the exact sum attributable to contempt could not be "accurately gauged," the remedy is not to deny sanctions altogether but to set a reasonable amount (see, e.g., Jamie v Jamie, 19 AD3d 330 [1<sup>st</sup> Dept 2005]; Melnitzky v Uribe, 8 Misc3d 1029 [Sup Ct NY Co 2005][reducing requested sanction from \$100,000 to \$4,500]). For the same reason, Prudential's demand for the full amount of attorney's fee expended in connection with the relevant discovery is rejected.

Accordingly, it is

ORDERED, that plaintiff's motion to confirm and modify the Special Referee's Report and Recommendation is granted to the extent of confirming the finding of contempt and imposition a sanction of \$150,250.00 upon defendants, and it is further

ORDERED, the defendants' motion to reject the report is denied; and it is further

ORDERED, that the clerk is directed to enter judgment in favor of plaintiff against defendants in the sum of \$150,250.00; and it is further

ORDERED, that the action shall continue.

Dated: January 9, 2006

ENTER:

  
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J.S.C.

**FILED**

JAN 12 2006

CLERK OF COURT