

**Diamond Films Netherlands Cooperatief U.A. v  
HC2 Network Inc.**

2025 NY Slip Op 32810(U)

July 31, 2025

Supreme Court, New York County

Docket Number: Index No. 158690/2024

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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DIAMOND FILMS NETHERLANDS COOPERATIEF U.A.,

**INDEX NO.** 158690/2024

Petitioner,

**MOTION DATE** -

- v -

HC2 NETWORK INC., PARAMOUNT GLOBAL, and TUBI,  
INC.,

**MOTION SEQ. NO.** 001

Respondents.

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 34, 37, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 60, 61, 62, 63, 64, 66, 73, 75

were read on this motion to/for TURNOVER PROCEEDING.

This is a turnover proceeding, pursuant to CPLR 5225(b) and CPLR 5227, in which petitioner seeks an order directing (1) HC2 Network Inc. (HC2) to turn over all funds or property in its possession or custody in which nonparty judgment debtor TV Azteca S.A.B. de C.V. (Azteca) has an interest, including but not limited to the \$2,498,562 held by HC2, to partially satisfy the judgment entered in favor of petitioner against Azteca; (2) Paramount Global (Paramount) to turn over all funds or property in its possession or custody in which Azteca has an interest, including but not limited to the \$219,224.13 held by Paramount; and (3) Tubi, Inc. (Tubi) to turn over all funds or property in its possession or custody in which Azteca has an interest held by Tubi. Petitioner also seeks an order directing respondents to pay any debts coming due to Azteca directly to petitioner until the judgment is satisfied.

HC2

HC2 opposes this motion on two grounds. First, HC2 asserts that, pursuant to the language of a Mutual Release and Termination Agreement between HC2 and Azteca (Release), it is not entirely clear whether HC2 is currently required to pay Azteca \$2,498,562 or when it could be required to pay Azteca. This argument is misleading. Payment is not an option. The money is owed to Azteca under the Release. This is clear from the terms of the Release, which require HC2 to pay Azteca

“the sum of Two Million Four Hundred Ninety-Eight Thousand Five Hundred Sixty-Two United States Dollars (US\$2,498,562) ... on the third Business Day following the date of the earliest to occur of the following: (i) an order issued by the court in the matter entitled *Diamond Films Netherlands Cooperatief U.A. against TV Azteca S.A.B. DE C.V.*, Supreme Court of New York, County of New York, Index No. 655384/2020 (the ‘New York Lawsuit’) vacating the judgement [sic] entered on June 23, 2022 in favor of Diamond Films Netherlands Cooperatief U.A. against TVA, (ii) an order issued by the court in the New York Lawsuit authorizing the payment of the amount set forth in this Section 7, (iii) the expiration of the Restraining Notice dated July 26, 2022 served on HC2 Network in connection with the New York Lawsuit or (iv) reasonable opinion of counsel of HC2 Network.” (NYSCEF 7, Release ¶ 7.)

HC2’s argument that “the Release is ambiguous as to whether the second condition has been or will be satisfied” (NYSCEF 45, Memo in Opp at 2) is disingenuous. This provision is a blatant attempt to circumvent this court’s judgment in *Diamond Films Netherlands Cooperatief U.A. against TV Azteca S.A.B. DE C.V.*, Supreme Court of New York, County of New York, Index No. 655384/2020 (Underlying Action) and will not be countenanced. For example, the second condition is an impossibility as this court lacks jurisdiction to issue an order in the Underlying Action to essentially enforce the Release by directing HC2 to pay Azteca the monies owed.

“Under CPLR article 52, a special proceeding for a turnover order is the procedural mechanism devised by the legislature to enforce a judgment

against an asset of a judgment debtor, held in the 'possession or custody' of a third party. Section 5225 (b) provides, in pertinent part:

'Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.' (*Commonwealth of the N. Mariana Is. v Canadian Imperial Bank of Commerce*, 21 NY3d 55, 59-60 [2013].)

HC2 does not deny it has possession of the money in which Azteca has an interest. In fact, its whole argument is that it is unclear when to pay the money owed to Azteca under the Release. Azteca clearly has an interest in this money and CPLR 5225 is satisfied. Thus, the Release is not a bar and the turnover order is warranted.

HC2's second argument that the Underlying Action is ongoing as there is a pending renew and reargument motion pending motion is moot as that motion was denied. (Underlying Action, NYSCEF 365, Decision and Order [Mot. Seq. No. 011].)

### Paramount

Paramount does not object to turning over the restrained funds with two exceptions. First, it asserts that it is entitled to an offset of funds allegedly owed to Paramount by Azteca pursuant to Debtor and Creditor Law § 151.

Debtor and Creditor Law § 151 "confers upon a garnishee a right to set off any debt owed to it by a judgment debtor. This right of setoff ... is superior to the rights of intervening judgment creditors and may be exercised even after the judgment creditor has undertaken enforcement of his claim against the judgment debtor. Although the statute does not expressly refer to restraining notices, it seems abundantly clear that, by enacting section 151 of the Debtor and Creditor Law, the Legislature intended to 'cover the

field' in terms of the garnishee's right of setoff vis-a-vis the various enforcement devices. Hence, the rights conferred under a restraining notice, which, in actuality, is but a 'junior remedy' in the arsenal of enforcement mechanisms under CPLR article 52, clearly are subject to the superior right of setoff under section 151 of the Debtor and Creditor Law." (*Aspen Indus., Inc. v Mar. Midland Bank*, 52 NY2d 575, 582 [1981] [citations omitted].)

Thus, Paramount is entitled to a setoff if it can prove Azteca owes it money.

Paramount also asserts that it cannot be required to pay in perpetuity as stated in petitioner's proposed order. The court will not order any payments in perpetuity. (*Neshewat v Salem*, 365 F Supp 2d 508 [SD NY 2005].) The court notes that petitioner's one case on an attachment is not instructive.

#### Tubi

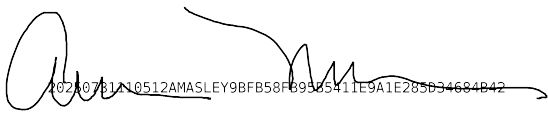
Tubi's only concern is with the pending motion in the Underlying Action. However, as discussed above this issue is moot as that motion has been resolved. (Underlying Action, NYSCEF 365, Decision and Order [Mot. Seq. No. 011] [Denied].)

Accordingly, it is

ADJUDGED that the petition is granted; and it is further

ORDERED that Paramount is entitled to an offset; and it is further

ORDERED that within 10 business days, the parties may submit a stipulation regarding the turnover amounts or petitioner may submit a proposed turnover order with supporting proof - approximate amounts are unacceptable; otherwise, the court will direct a hearing before a referee.



7/31/2025  
**DATE**

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**ANDREA MASLEY, J.S.C.**

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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