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Coppola Verdict's Impact on Studio/Talent Talks

by

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If the \$80 million jury verdict for Francis Ford Coppola--in his suit against Warner Bros. for interfering with his desire to take his "Pinocchio" film project to another studio--came as a shock to the studio, that could only be the result of a failure to learn from experience. *Coppola v. Warner Bros.* (L.A. Superior Court No. BC 135198) In 1988, Warner Bros. sued comedian Rodney Dangerfield because of his alleged breach of an oral contract to appear in the motion picture "Caddyshack II." When the matter first came to court, Los Angeles Superior Court Judge John Zebrowski delivered a blistering rebuke to Warner Bros.' attorneys by exclaiming from the bench "Aren't you people ever going to come in front of me with a signed contract?"

Judge Zebrowski has since been elevated to California's Second District Court of Appeal, and he may well be one of the justices who hears any Warner appeal from the Coppola verdict. Whether he sits on that panel or not, Zebrowski's view about the importance of having a signed contract should be duly noted by transactional attorneys in the motion picture industry, because that opinion is widely held by the California judiciary.

Judge Madeleine I. Flier, the trial judge in *Coppola*, is clearly among the judges who share Justice Zebrowski's point of view. Before submitting Coppola's tort claims to the jury, Judge Flier granted the director's motion for summary adjudication, ruling as a matter of law that there was no contract between Warner Bros. and Coppola. Why not? Because a draft "long-form" agreement had never been signed.

In opposing the motion for summary adjudication, Warner Bros. relied heavily on Coppola's signature on a three-page document styled a "Certificate of Employment." Included in the text of that document was the following language:

[The Coppola parties]..., for good and valuable consideration (receipt of which is hereby acknowledged), do hereby acknowledge, certify and agree that....all

ideas, suggestions, plots, themes, stories, characterizations and other material, whether in writing or not in writing, at any time heretofore or hereinafter created or contributed by [the Coppola parties] which in any way relate to the (Pinocchio) Picture or to the material on which the picture will be based, are and shall be deemed works 'made-for-hire' for [Warner Bros.] and/or works assigned to [Warner Bros.], as applicable.

One reason why the huge verdict in the Coppola case has sent shockwaves through the business affairs departments at the film studios is because the Certificate of Employment--a common legal tool in the industry--was declared to be "unenforceable."

In her summary adjudication opinion, Judge Flier provided the following explanation for her decision:

The Certificate provision referring to 'ideas' is not subject to the Copyright Act, but is subject to basic contract principles and as such, the Certificate agreement is unenforceable as being too vague as to the identity of the subject matter of the agreement. The Certificate attempts to prohibit 'forever' plaintiffs from use or development of all 'ideas' relating to Pinocchio. As to those items enumerated in the Certificate which are encompassed by the Copyright Act, such as 'stories, characterizations and other material...' [T]he Certificate fails to set forth precisely what rights are being transferred and at what price. The provisions which are subject to the Copyright Act are thus unenforceable as a matter of law.

Coppola obviously did not agree to work for free. Rather, his compensation was supposed to be provided for in one or more separate contracts for his services as writer, producer, and director. Those contracts were never signed.

Coppola, and his producing partner, Fred Fuchs, sued for intentional interference with a contract and tortious interference with business relations. Warner Bros. cross-complained to enforce its oral contract. Coppola's attorneys were Robert S. Chapman and Brian L. Edwards, of Los Angeles' Greenberg Glusker Fields Claman & Machtinger. J. Larson Jaenicke and Melodie K. Larsen, of Los Angeles' Rintala, Smoot, Jaenicke & Rees, represented Warner Bros.

In its opposition to Coppola's summary adjudication motion, Warner Bros. blamed the absence of a signed, long form agreement on Coppola's lawyers:

Warner's executives...testified...[that] Warner had a policy requiring that Certificates of Employment be executed separately from the written documentation confirming oral production agreements....This policy was adopted because Warner had 'such a difficult time getting formal production agreements signed....' Warner's experience had been that clients of Mr. [Barry] Hirsch's law firm simply would not sign long-form production agreements.

Coppola's attorneys told a different story: Comments from Hirsch had been transmitted with the draft long-form contract--but ignored by Warner Bros. No contract was concluded

because Warner Bros. refused to match the compensation (\$5 million against 15% of the gross) Mr. Coppola had received for directing "Godfather III" and "Dracula."

Because Warner Bros. would not meet his price, Coppola notified the studio there was no deal, returned the development money he had been paid (a modest sum), and took the project to Columbia Pictures. Because "Pinocchio" is in the public domain, he felt that he had a right to make his film at any studio he chose.

Warner Bros. disagreed. Relying on the purported oral contract and the signed Certificate of Employment, the studio asserted that it had exclusive rights to Coppola's services on any "Pinocchio" project. When Coppola entered into a "Pinocchio" deal with Columbia Pictures, Warner Bros. intervened, effectively killing the project.

Certificate of Employment Viability

Seen from a broader perspective, one consequence of the verdict for Coppola is to cast doubt on the future viability of the Certificate of Employment in the endless games of brinkmanship between business affairs lawyers and their counterparts at the entertainment law boutiques. Because business affairs attorneys have limited authority to modify their studios' standard terms and conditions, attorneys representing talent have refined a technique of negotiating beyond the film-production start date, then discontinuing talks once the cameras roll. Salaries are paid, fees and commissions are collected, the picture is completed and, in the vast majority of cases, all unresolved issues become moot.

Although studios complain loudly about this tactic, in fact most business affairs departments are willing participants in the process. With the pressure on to close a deal, the path of least resistance is often simply to agree to disagree and allow the motion picture to go into production with contracts still in "redline" draft.

Although the system works with a wink and a nod, it is vulnerable to abuse. The Certificate of Employment in particular can be misused in a negotiation where a studio wants to bind an artist to a project without subjecting itself to a pay-or-play obligation in return. With a written Certificate signed, but deal terms still in dispute, the artist may find his or herself caught in a "bear hug," forced to make the contract concessions the studio demands--or else.

In Coppola's case, the bear hug came when negotiations over compensation foundered and the director notified the studio he was taking the project elsewhere. Warner Bros. asserted Coppola was bound to them and could not produce a "Pinocchio" film anywhere else. According to Coppola attorney Robert Chapman, Coppola then wrote a letter to Warner Bros. asking "What are you talking about? Nothing has ever been signed. What are the terms?" But Warner Bros. ignored the letter. When Columbia Pictures read Francis Ford Coppola's "Pinocchio" screenplay, they agreed to pay \$26 million for the domestic rights. Columbia insisted, however, that the dispute with Warner Bros. be cleared. According to Chapman, Warner Bros. made overreaching settlement proposals that made it functionally impossible for the picture to proceed.

Coppola's attorneys convinced a Los Angeles Superior Court jury that Warner Bros.' bear

hug tactics were tortious and motivated by ill will, which explains the size of the "Pinocchio" verdict. In rendering special verdicts, the jury specifically held that Warner Bros.' conduct was "wrongful" and found the studio guilty of "malice" and "fraud." The jury then awarded the director and his co-producer \$20 million in compensatory damages and \$60 million in punitive damages.

Tired of Unsigned Contracts

Will the verdict be upheld if Warner Bros. appeals?

One critical factor will be a recent California Court of Appeal decision invalidating an oral contract in PMC, Inc. v. Saban Entertainment, Inc. (1996) 45 Cal.App.4th 579, 52 Cal. Rptr. 877. That case involved certain merchandising rights for the copyrighted "Mighty Morphin Power Rangers" and a claim by the plaintiff that an oral contract to convey those rights had been repudiated when a competitor offered a better deal. The court dismissed the complaint on summary judgment because the defendant, Saban, had never signed a written agreement with the plaintiff.

The Copyright Act "statute of frauds" (17 U.S.C. ' 204(a)) invalidates exclusive licenses that are not signed by the copyright holder. The Court of Appeal explained its decision:

The Copyright Act's writing requirements are intended to force parties to bargain carefully and to determine precisely what rights are being transferred, and at what price....The writing should also serve as a guidepost for the parties to resolve their disputes [r]ather than look to the courts every time they disagree....

What is the lesson to be learned? Simply put, that many California judges are sick and tired of movie industry lawsuits arriving in their courtrooms with unsigned contracts.

The Dangerfield Case

In the "Caddyshack II" case, the contract was never completed because, among other things, Warner Bros. insisted on splitting Rodney Dangerfield's \$7 million acting fee into a \$5 million "main agreement" and a \$2 million "side letter." Dangerfield's transactional attorney requested a number of changes, which Warner Bros. failed to make. When Warner Bros. sued to enforce the supposed oral contract, as counsel for Mr. Dangerfield, I argued that Warner Bros. wanted the side letter for an improper purpose, namely, so it could display the \$5 million main agreement during negotiations with other actors in an effort to understate Dangerfield's \$7 million compensation and persuade other artists to accept less compensation in the false belief they were being compensated on a par with Dangerfield.

Judge Zebrowski issued a sweeping discovery order, commanding Warner Bros. to produce for Dangerfield's counsel all of the side letters it had entered into with other star performers in the five years prior to the lawsuit. Rather than comply with the court's order, Warner Bros. hurriedly settled with Dangerfield.

In the Coppola case, Warner Bros. was reportedly offered an early settlement whereby

all it had to do was release Coppola to make "Pinocchio" elsewhere, which it refused to do. At a later time, when the "Pinocchio" project at Columbia had collapsed, Coppola offered to settle for \$5 million, but his offer was again rejected. Prior to trial, a settlement judge recommended to Warner Bros. that the studio should pay \$15 million to avoid a jury trial, which Warner Bros. again refused.

Warner Bros.' counsel intends to file a motion for a new trial, which will be heard by Superior Court Judge Flier. Since Warner Bros. will be asking Judge Flier to reverse her own prior rulings, the prospects for success of such a motion are not great. However, it is common for trial judges to reduce the *size* of verdicts like the one in the Coppola case, which will be Warner Bros.' best hope during the post-trial hearing.

If the motion for a new trial is denied, and the court refuses to reduce the verdict, Warner Bros. will be faced with a difficult choice under California Rule of Court ' 977(a). That rule provides that an unpublished opinion by a trial judge may not be cited as precedent in other California cases. By way of example, the famous ruling in for writer Art Buchwald in his lawsuit against Paramount Pictures for net profits from the film "Coming to America" cannot be cited in other lawsuits, because Paramount settled with Buchwald while the appeal was pending. As a result, the Los Angeles Superior Court's finding that Paramount's net profit definition was "unconscionable" and unenforceable was rendered legally moot.

The Buchwald verdict was for less than a million dollars, so that settlement represented a relatively small sum for a major motion picture studio. By contrast, Coppola's verdict is large enough to make a noticeable dent in the Time Warner balance sheet. Thus, if Warner Bros.' post-trial motions are denied, the studio will either have to pay in full, settle at a figure acceptable to Coppola, or appeal. If it takes the third course, Warner Bros. risks setting a legal precedent that could be cited in future lawsuits against the studio--and against other studios as well. Given this predicament, it would not be surprising if Warner Bros. quietly settles the case and changes its business practices in the future.

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