

January 29 2024

## Cinema and copyright: limitations of transfer agreements and exploitation licences

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### Facts

The first plaintiff, a company, was established in 1989. Its sole partners were:

- GZ and GS, cinematographers;
- SE (who had the pseudonym "L"), actor, writer and screenwriter (second plaintiff); and
- KF, director.

Each partner had 25% stake in the company. The purpose of the company was to exploit the film (R), the filming of which was completed in the year 1983. Based on the above agreements, the first plaintiff claimed to be the beneficiary of all kinds of IP rights as well as the right to exploit the film by 70%, while the Hellenic Film Center was the beneficiary of the remaining 30%.

The first defendant, on the other hand, claimed to have obtained from KF, the author of R, the rights to reproduce, distribute and exploit worldwide video footage in any form of the film in a new much longer version of the original. They claimed that they had been granted these rights for a decade (between 15 January 2003 and 15 January 2013).

The first plaintiff, invoking the right to absolute property rights of reproduction, registration and circulation, distribution and any kind of exploitation of R, requested that the defendants be obliged, with the threat of a fine and personal detention of the second defendant:

- to cease the infringement and to omit any act of infringement;
- to prohibit the reproduction, circulation, distribution, sale and in general exploitation of the film; and
- to confiscate the videos in question.

### ***Court of Appeal judgment***

The Court of Appeal accepted, in its contested decision, the following facts, according to the interested appellate review party:

*By virtue of contract, which was legally published in the Gazette, the plaintiff and already respondent limited liability company was established with the name "R Ltd" (respondent), for the purpose of producing and exploiting the motion picture with the title "R", as well as other films. **The duration of the company was set for five years**, starting from the publication of its statutes in the Government Gazette (25-5-1983), then, by virtue of no. 6899/16-5-1998 contract of the Athens Notary Evgenia Boura-Papandreou, was extended for a decade, that is from 25-5-1988 to 25-5-1998, when the company was dissolved and the stage of liquidation followed, which has not completed to date. (Emphasis added.)*

After the plaintiff company had been established and R had already been completed, a contract dated 31 December 1983 (1983 contract) was drawn up in writing between the two under the name "GFC". In the contract, it was agreed that the plaintiff, as the universal successor of the original producers (ie, the general partnership with the name "E.S. - G.Z. O.E." and KF), would undertake any obligation owed to the counterparty arising from the implementation of the pre-existing private agreement of 23 September 1982 (1982 contract).

From these two contracts it was clear, without requiring recourse to the special interpretative rules of articles 34(1) and 15(2) of Law 2121/1993, that KF and L were primary co-beneficiaries of the IP rights (property and moral) over R. This arose from the 1982 contract, with KF as the director and both as screenwriters. From the combination of both contracts, the true will of the authors KF and L to transfer to the plaintiff company all the individual powers of their property rights was evident beyond doubt. The plaintiff company therefore became the sole beneficiary and KF and L were alienated from the rights.

### **Proceedings: evaluation of Law 2121/1993**

Law 2121/1993 established that:

- legal acts related to the economic exploitation of IP are subject to written type (article 14), however, the invalidity due to the lack of type is relative (ie, it is in favour of the intellectual creator); and
- both the transfer of the property right and exploitation licences can be limited in terms of powers, purpose, duration, local power and extent or means of exploitation. According to an interpretive rule, unless something different is defined in the exploitation contract, its duration is considered to be limited to five years (article 15(1) and (2)).

However, article 68, entitled "non-retroactivity of the law", states that "contracts drawn up before the entry into force of this law are governed from the previous law after one year from the entry into force of the law".

Therefore, it follows that (according to article 68(3)) previous works and performances are also subject to this law, but only from "now on" (ie, after the entry into force of the law).

With reference to contracts that were drawn up before the entry into force of the Law 2121/1993, rights of beneficiaries and any obligations would be governed by the new law from 3 May 1994 (ie, one year after the law came into force). Therefore, as long as no distinction is made in article 68, all contracts drawn up for any type of exploitation, in the broadest sense of the term, of intellectual works and, therefore, both the "transfer contracts" of the (property) right and the "exploitation contracts" of the project or its "licence to exploit" are covered.

Article 15(2) states that "if the duration of the transfer or the contracts or the exploitation license is not specified and if something different does not emerge from the commercial practices, this duration is considered to be limited to five years". In view of the above (ie, according to article 68(3)), this also applies to contracts drawn up before its entry into force, if there is no agreed duration specified. The five-year period cannot be considered to be retroactively applicable, as it could have ended before the entry into force of the new law. This legislative solution is reasonable since, before the new law, contracting parties could not have been aware of this limitation of the duration of the transfer, to act accordingly in their contracts.

Therefore, the five-year period began pursuant to article 68(3), one year after the entry into force of the law: starting 3 May 1994 and ending 3 May 1999. As long as it is not proven that a different

duration of the transfer had been determined in contracts that were drawn up before Law 2121/1993 came in force, the provision of article 1(2) applies. Consequently, the duration of these contracts expired, in terms of all the powers transferred, on 3 May 1999. From that point onwards, the beneficiaries of the intellectual work (copyright owners) are the creators. Proof of a contrary agreement regarding the duration of the transfer must be produced by the contracting party claiming otherwise.

## **Decision**

The Supreme Court held that Court of Appeal had deprived its decision of a legal basis.<sup>(1)</sup> There had been no clear admission of an agreement linking the duration of the company with the duration of transfer to the respondent, or their property right to exploit R.

Whether or not such an agreement existed was essential for the outcome of the trial. The main consideration centred on the provision of article 15(2) of Law 2121/1993, which states "if the duration of the of transfer or of the contracts or of the exploitation license and if something different does not arise from commercial practices, this duration is considered to be limited to five years". Taken with article 68(3), this would mean that the contract had expired on 3 May 1999 if no other duration had been specified. From that point on, the beneficiaries of the exploitation of the intellectual work would be its creators.

Due to these insufficient and unclear justifications, the facts necessary to justify the applied provisions of the substantive law and to establish the legitimacy of the respondent and their legitimate interest in bringing the action were not proven. Therefore, the appellate review became impossible, and the Court of Appeal's contested decision was annulled.

## **Comment**

This case relates to the exploitation of one of the most popular and classical movies in the history of Greek cinema. The case had rather serious legal aspects since it appears to be the first time the Supreme Court has dealt with the crucial issue of the duration of copyright transfer agreements which were concluded prior to the implementation of the "new" Greek Copyright Law in 1993.

The case is to be heard again before the Court of Appeal.

*For further information on this topic please contact Kriton Metaxopoulos at A & K Metaxopoulos & Partners Law Firm by telephone (+30 210 725 7614) or email*

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## **Endnotes**

(1) Decision 395/2022.