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NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WARREN BEATTY,)	Case No. CV 08-07662 DDP (SSx)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S MOTION
)	FOR SUMMARY JUDGMENT AND DENYING
v.)	DEFENDANT'S MOTION FOR SUMMARY
)	JUDGMENT
TRIBUNE MEDIA SERVICES, INC.)	
et al.,)	[Motions filed on February 14,
)	2011]
Defendants.)	

Presently before the court is Plaintiff Warren Beatty's Motion for Summary Judgment and Defendant Tribune Media Service, Inc.'s cross Motion for Summary Judgment. After reviewing the materials submitted by the parties, considering the arguments therein, and hearing oral arguments, the court GRANTS Plaintiff's motion and DENIES Defendant's motion.

I. Background

In August 1985, Plaintiff Warren Beatty and Defendant Tribune Media Services, Inc. entered into a written agreement ("Agreement") whereby Plaintiff obtained motion picture, television, and other rights to the Dick Tracy character. (Compl. ¶ 7.) Paragraph 9 of the Agreement provided a procedure whereby under certain

1 circumstances the rights to Dick Tracy would revert to Defendant.
2 (Id. ¶ 8.) Specifically, Paragraph 9 provided that if a
3 "theatrical motion picture or television series or special" had not
4 commenced within five years of the initial picture or those
5 subsequent, Defendant "may give [Plaintiff] notice of intention to
6 effect a reversion of all rights granted." (Compendium, Ex. A,
7 1985 Agreement, ¶ 9.) Furthermore, "[i]f within two years after
8 receipt of said notice, such principal photography has not
9 commenced, then [Defendant], by a further written notice to
10 [Plaintiff] may effect such reversion." (Id.)

11 In 1990, Plaintiff starred in Disney's Dick Tracy. (Beatty
12 Decl. ¶ 6.) Thereafter, Plaintiff entered into a separate agreement
13 with Disney whereby Disney produced a television episode in which
14 Nancy Kerrigan skated with popular Disney characters, including
15 Dick Tracy. (Williams Decl., Ex. B, Rone Letter.) In 1995,
16 Defendant agreed that Nancy Kerrigan's ice skating special would be
17 considered a "television special" for purposes of satisfying the
18 Agreement. (Id.)

19 In 2005, Defendant took the position that the Dick Tracy
20 rights should revert to it, and Plaintiff filed suit seeking a
21 judicial determination that there had been no reversion of the Dick
22 Tracy rights because the requisite notices had not been provided.
23 (Compl. ¶¶ 9-11.) In November 2006, this court dismissed
24 Defendant's claim as moot. (Id. ¶ 11.)

25 Shortly thereafter, Defendant gave Plaintiff written notice
26 that Plaintiff had two years within which to commence principal
27 photography of a Dick Tracy "theatrical motion picture or
28

1 television series or special" per the terms of the Agreement.

2 (Id.) Specifically, Defendant advised Plaintiff that:

3 This letter shall serve as notice that
4 [Defendant] intends to effect a reversion of
5 all rights granted to [Plaintiff] pursuant to
6 the Dick Tracy Agreement Unless, as
7 required by Paragraph 9 of the Dick Tracy
8 Agreement, you commence principal photography
9 on "another theatrical motion picture or
television series or special" within two years
after receipt of this notice, [Defendant] will
provide you with another written notice, at
which time all rights in the Dick Tracy
Property will be reverted to [Defendant].

10 (Id.)

11 On April 16, 2008, Plaintiff sent a letter to Defendant
12 requesting the deadline be extended. (Williams Decl., Ex. D,
13 Beatty Letter.) The letter stated that while Plaintiff would
14 prefer to make a sequel to the Dick Tracy movie after the current
15 deadline, Plaintiff was "prepared to do a TV special in order to
16 preserve [his] rights" even though he did not "see how a TV special
17 would benefit either [Defendant] or [himself]." (Id.) Defendant
18 declined. (Williams Decl., Ex. E, Williams Letter.)

19 On November 8, 2008, in advance of the two-year deadline,
20 Plaintiff gave written notice to Defendant that he had commenced
21 principal photography of a Dick Tracy television segment (hereafter
22 "the Segment"). (Compl. ¶ 13.) The Segment was to be aired on
23 Turner Classics Movies (a cable television network) preceding the
24 1990 Dick Tracy movie. (Compendium, Ex. D, TCM Agreement, ¶ 3.)
25 In the Segment, Plaintiff dressed up as Dick Tracy and answered
26 questions posed to him by a film critic. (Beatty Decl. ¶ 11.) The
27 Segment was to be aired in July 2009 as part of a Dick Tracy
28 marathon, but was never broadcast. (Wright Decl., Ex. 4, ¶¶ 4-5.)

1 On November 20, 2008, Plaintiff filed a complaint seeking
2 declaratory relief. (Dkt. No. 1.)

3 **II. Legal Standard**

4 Summary judgment is appropriate where "the pleadings, the
5 discovery and disclosure materials on file, and any affidavits show
6 that there is no genuine issue as to any material fact and that the
7 movant is entitled to a judgment as a matter of law." Fed. R. Civ.
8 P. 56(c); see also Celotex Corp. v. Catrett , 477 U.S. 317, 324
9 (1986). In deciding a motion for summary judgment, the evidence is
10 viewed in the light most favorable to the non-moving party, and all
11 justifiable inferences are to be drawn in its favor. Anderson v.
12 Liberty Lobby, Inc. , 477 U.S. 242, 255 (1986).

13 A genuine issue exists if "the evidence is such that a
14 reasonable jury could return a verdict for the nonmoving party,"
15 and material facts are those "that might affect the outcome of the
16 suit under the governing law." Id. at 248. No genuine issue of
17 fact exists "[w]here the record taken as a whole could not lead a
18 rational trier of fact to find for the non-moving party."
19 Matsushita Elec. Indus. Co. v. Zenith Radio Corp. , 475 U.S. 574,
20 587 (1986).

21 It is not enough for a party opposing summary judgment to
22 "rest on mere allegations or denials of his pleadings." Anderson ,
23 477 U.S. at 259. Instead, the nonmoving party must go beyond the
24 pleadings to designate specific facts showing that there is a
25 genuine issue for trial. Celotex , 477 U.S. at 325. The "mere
26 existence of a scintilla of evidence" in support of the nonmoving
27 party's claim is insufficient to defeat summary judgment.
28 Anderson , 477 U.S. at 252.

1 Federal Rule of Evidence 201 permits a court to take judicial
2 notice of adjudicative facts. "A judicially noticed fact must be
3 one not subject to reasonable dispute in that it is either (1)
4 generally known within the territorial jurisdiction of the trial
5 court or (2) capable of accurate and ready determination by resort
6 to sources whose accuracy cannot reasonably be questioned." Fed.
7 R. Evid. 201(b).

8 **III. Discussion**

9 This dispute is, at its core, a contract dispute. The parties
10 disagreement centers on their differing understandings of the term
11 "television special." As noted above, under Paragraph 9 of the
12 Agreement, if principal "photography has not been commenced" on a
13 "theatrical motion picture or television series or special" within
14 two years of Defendant having provided notice, Plaintiff's rights
15 to Dick Tracy revert back to Defendant. Here, Plaintiff contends
16 that his commencement of principal photography of the Dick Tracy
17 television segment, i.e. the Segment, in which he was interviewed
18 is sufficient to preserve his rights under the Agreement and
19 precludes Defendant from seeking a reversion. (Compl. ¶ 15.)

20 Defendant argues that Plaintiff's "thirty minute clip show"
21 for cable television of Plaintiff "wearing a yellow 'Dick Tracy'
22 coat and hat while commenting on various archival clips of existing
23 Dick Tracy works" does not satisfy Plaintiff's obligation. (Def.'s
24 Motion 1:24-28, 7:3-4.) Therefore, by Defendant's reasoning,
25 Plaintiff's Dick Tracy rights under the agreement must revert back
26 to Defendant and Plaintiff is not entitled to declaratory relief.

27 Under California law, the court's role in determining the
28 "intention of the parties as expressed in the contract" is to

1 determine "what the parties meant by the words they used." Pacific
2 Gas & Elec. Co. v. G.W. Thomas Drayage & Riggin Co., 69 Cal. 2d 33,
3 38 (1968). That is, "[a] contract must be so interpreted as to
4 give effect to the mutual intention of the parties as it existed at
5 the time of contracting" Id., 38 n.5 (citing Cal. Civ.
6 Code § 1636). With regards to written contracts, "the intention of
7 the parties is to be ascertained from the writing alone, if
8 possible." Cal. Civ. Code § 1639.

9 Here, the parties dispute the meaning of "television special."
10 Defendant argues that "television special" is a technical term used
11 in the television industry, and therefore a technical definition
12 should apply. Defendant seeks judicial notice of an Entertainment
13 Law treatise, which defines a "television special." Based on this
14 definition, Defendant contends that the Segment did not qualify
15 because the Segment: (1) was never intended to be telecast on a
16 free commercial network; (2) it contained a narrative and had a
17 running time of less than two hours; and (3) it was not a stand-
18 alone program, but rather, was run in conjunction with the Disney
19 Dick Tracy movie. (Def.'s Motion 8:16-9:3.) Defendant further
20 argued that even accepting the definition of "television special"
21 offered by Plaintiff, the Segment is not a "television special"
22 because it was to be broadcast together with the Dick Tracy movie.

23 Plaintiff counters that the term "television special" is not
24 defined anywhere in the Agreement and should be given its ordinary
25 and popular meaning. (Pl.'s Opp'n to Def.'s Motion 12:14-23.)
26 Plaintiff cites Webster's Collegiate Dictionary, stating that a
27 "special" is "something (as a television program) that is not part
28 of a regular series." (Id.) Plaintiff argues that it is proper to

1 use dictionary definitions to determine the ordinary meaning of
2 words in a contract. (Id. 13:2-5 citing Falkowski v. Imation
3 Corp., 132 Cal. App. 4th 499, 508 (2005).) Plaintiff further
4 points out that there is no mention in the Agreement of any of the
5 requirements and limitations that Defendant now imputes to the term
6 "television special." The court agrees.

7 The fundamental goal of contract interpretation is to give
8 effect to the parties' mutual intentions, which, if possible,
9 should be inferred solely from the written terms of the contract.
10 If that language is clear and explicit, it governs. See Forecast
11 Homes, Inc. v. Steadfast Ins. Co., 181 Cal. App. 4th 1466, 1467
12 (2010). Here, the contract requires only that Plaintiff
13 "commence[]" " principal photography" on a "theatrical motion
14 picture or television series or special." (1985 Agreement, ¶ 9.)
15 It is undisputed that Plaintiff commenced principal photography in
16 a timely fashion. Furthermore, the court finds that both the
17 ordinary meaning of "television special" as stated in Webster's
18 Dictionary and as established by the parties in their course of
19 dealing support a conclusion that Plaintiff's thirty minute
20 television segment was a "television special" for purposes of the
21 Agreement.

22 First, the court notes that the plain terms of the Agreement
23 include none of the limitations suggested by Defendants. Nowhere
24 does the Agreement require that the special be broadcast on a
25 "network," nor that it be over an hour long if narrative, nor that
26 it stand alone, nor that it not be aired in conjunction with
27 another program. The Agreement also does not at any point
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1 condition retention of the Dick Tracy rights on a "television
2 special" that is commercially profitable.

3 Next, the court finds it significant that in 1995 Defendant
4 agreed that the Nancy Kerrigan ice skating special constituted a
5 "television special" for purposes of the Agreement. (Compendium,
6 Ex. B, January 25, 1995 Letter.) It is undisputed that the
7 Kerrigan special was also thirty minutes long, and that the Dick
8 Tracy character in that television segment only appeared briefly.
9 With respect to the substance of the special, the disputed special
10 makes far greater substantive use of the Dick Tracy rights and
11 legally shares significant similarities. The two segments were the
12 same length; they both were not part of a television series but
13 stood alone as television episodes; they were both shot for
14 television; and they both involved the use of the Dick Tracy
15 character. Defendant may be frustrated that Plaintiff has not used
16 his rights to Dick Tracy for more profitable ends. The court,
17 however, cannot "create for the parties a contract they did not
18 make," and the court "cannot insert language that one party now
19 wishes were there." Forecast Homes, Inc., 181 Cal. App. 4th at
20 1476.

21 Finally, Defendant avers that Plaintiff's Dick Tracy segment
22 was created in bad faith as it was not intended to create value
23 from the Dick Tracy property. The Agreement, as written, does not
24 require Plaintiff to meet particular financial benchmarks.
25 Defendant avers that the only reason Plaintiff produced the segment
26 was to retain his rights. That may very well be true; no more was
27 required. See Third Story Music, Inc. v. Waits, 41 Cal. App. 4th
28 798, 809 (1995) (explaining that "courts cannot . . . rewrite

1 contracts because they operate harshly or inequitably.") It is not
2 an act of bad faith for a party to act in conformity with rights
3 which have been provided to him under the terms of the Agreement.
4 See Wolf v. Walt Disney Pictures and Television, 162 Cal. App. 4th
5 1107, 1120 (2008). Furthermore, there is substantial and
6 undisputed evidence which suggests that Plaintiff attempted to
7 maximize the profitability of the Segment by showing it in
8 conjunction with a showing fo the Dick Tracy film.

9 Accordingly, Plaintiff is entitled to summary judgment.

10 **IV. Conclusion**

11 For the reasons set forth above, the court GRANTS Plaintiff's
12 Motion for Summary Judgment and DENIES Defendant's Motion for
13 Summary Judgment.

14 IT IS SO ORDERED.

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16 Dated: March 24, 2011


DEAN D. PREGERSON
United States District Judge

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