

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ILSHIN INVESTMENT CO., LTD.,

Plaintiff and Appellant,

v.

BUENA VISTA HOME
ENTERTAINMENT, INC.,

Defendant and Appellant.

B208839

(Los Angeles County
Super. Ct. No. BC347911)

ORDER MODIFYING OPINION

[change in the judgment]

THE COURT:

IT IS ORDERED that the opinion filed herein on May 13, 2011, be modified in the following particulars:

1. On page 2, line 6 of the last full paragraph, and page 6, line 2 of the second full paragraph, replace the word “incurring” with the word “recouping,” so the sentence on page 2 now reads:

But when distribution costs reached the \$900,000 threshold early in the venture, Buena Vista did not seek or obtain Last Patriot’s consent to continue recouping expenses, as the Agreement required.

And the sentence on page 6 now reads:

The Agreement does not indicate the circumstances that would justify Last Patriot in either granting or withholding its consent to Buena Vista's recouping distribution expenses above the \$900,000 threshold, nor the effect on the parties' rights and obligations if Last Patriot did not grant its consent.

2. On Page 3, the first sentence of the second full paragraph beginning "After Bifurcation" is deleted and the following sentence is inserted in its place:

After bifurcation of the conversion claim and a bench trial of the contract claims, the trial court awarded Ilshin contract damages for all the costs above \$900,000 that Buena Vista had deducted after June 26, 2001, the date two years before Ilshin's 2003 service of its levy on Buena Vista, totaling \$3,775,197 plus prejudgment interest.

3. On page 8, line 1 of the last full paragraph, the words "without evidentiary support that" are added after the word "Buena Vista contended," so the sentence reads:

Buena Vista contended without evidentiary support that it informed Last Patriot at that time that Buena Vista would have to end its distribution of the film if Last Patriot were to seek reimbursement of the distribution expenses over \$900,000; Las Patriot did not recall any such communication, and Buena Vista in any event received no response from Las Patriot.

4. On page 33, last sentence of the first full paragraph, the phrase “and appropriate prejudgment interest” is deleted, so the sentence now reads:

We instead will remand the matter to the trial court with directions to enter an amount for lost profits damages in favor of Ilshin in the amount of the highest amount of lost profits after October 2005 that is supported by the testimony of Ilshin’s expert, Wunderlich, as adjusted to account for the residual payments attributable to those projected profits for which Buena Vista would be entitled to reimbursement.

5. On page 41, at the end of the first paragraph, the date “June 23, 2001” is deleted and “June 26, 2001” is inserted in its place.

6. On page 52, second sentence of the third full paragraph, the phrase “along with prejudgment interest on the total” is deleted, so the sentence now reads:

“The trial court is directed to determine and enter an amount for lost profits damages in favor of Ilshin in the amount of \$452,163, adjusted as required by this opinion to reflect any change in the time the \$900,000 cost threshold was reached.

These modifications effect a change in the judgment.

Appellants’ petitions for rehearing are denied.

TO BE PUBLISHED.

CHANEY, J.

MALLANO, P. J.