

Darabont v AMC Network Entertainment LLC
2020 NY Slip Op 34341(U)
December 31, 2020
Supreme Court, New York County
Docket Number: 650251/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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FRANK DARABONT, FERENC, INC., DARKWOODS
PRODUCTIONS, INC., CREATIVE ARTISTS
AGENCY, LLC,

Plaintiffs,

- v -

AMC NETWORK ENTERTAINMENT LLC, AMC FILM
HOLDINGS LLC, AMC NETWORKS INC., STU SEGALL
PRODUCTIONS, INC., DOES 1 THROUGH 10,

Defendants.
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INDEX NO. 650251/2018

MOTION DATE 08/24/2020

MOTION SEQ. NO. 020

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 020) 563, 564, 664, 665, 666, 667, 668, 669, 670, 676, 677, 678, 679, 680

were read on this motion for

LEAVE TO REARGUE.

In this motion, Defendants seek leave to reargue to Court's decision denying their motion for summary judgment (Mot. Seq. No. 007), entered on April 10, 2020. (NYSCEF Doc. No. 326, *Darabont v AMC Network Entertainment LLC*, 2020 N.Y. Slip Op. 30926[U] [N.Y. Sup Ct, New York County 2020] [the April 10 Order] and, upon reargument, to grant summary judgment dismissing Plaintiffs' claims in this action. For the reasons set forth below, the motion is granted in part and denied in part. The April 10 Order will be withdrawn and revised, but the Court is not persuaded that reargument supports changing the result. The case will proceed to trial, which is currently scheduled to begin on April 26, 2020.

Under CPLR 2221(d), "[a] motion for leave to reargue ... shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion." However, "[r]eargument is not designed to afford the unsuccessful party successive opportunities to

reargue issues previously decided or to present arguments different from those originally asserted” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]).

Based upon the briefs submitted in connection with Defendants’ motion for summary judgment, the Court concluded it was necessary to decide whether AMC had a post-contractual obligation to negotiate the specifics of its proffered definition of Modified Adjusted Gross Receipts (“MAGR”). (April 10 Order at 12.). Indeed, that was Plaintiffs’ lead argument in opposition to Defendants’ motion. (*E.g.*, NYSCEF 309 at 1 [“**First**, AMC claims it is may unilaterally ‘furnish’ whatever MAGR definition it wants, ignoring its obligation to negotiate with Darabont. But the [Agreements] both require negotiation of the MAGR definition, **without preconditions.**” [emphases in original]; *id.* at 7 [“**The Agreements require AMC to negotiate the MAGR definition in good faith**] [emphasis in original]; *id.* at 9 [“**The 2010 Agreement also requires good faith negotiation of the MAGR definition**”] [emphasis in original]).

In seeking leave to reargue the Court’s denial of their motion for summary judgment Defendants argue vigorously that the Agreement imposed no obligation upon AMC to negotiate potential changes to its MAGR definition. In support of that position, AMC relied heavily upon an intervening decision in a case involving a different (but similar) set of agreements with a different set of plaintiffs in connection with profit participation rights for *The Walking Dead* series. (see *Kirkman v. AMC Film Holdings*, 2020 WL 4364279 (Cal. Sup. Ct. July 22, 2020)). The Court in that case, after a bench trial, concluded that AMC’s proffered definition of MAGR was final and binding upon those plaintiffs, subject only to specific protections contained in the parties’ agreements, and that the plaintiffs had no right to further negotiate those provisions in light of industry custom or otherwise.

Plaintiffs' response to those arguments in their opposition brief was curious. First, they argued that Defendants were "judicially estopped" from relying upon the *Kirkman* decision because Defendants previously had argued that this case and the California case were "very different." (NYSCEF Doc. No. 670 at 5-10.) That argument is meritless. Plaintiffs may argue that the cases are distinguishable on their facts, and they may seek to use Defendants' prior positions against them in making that point, but Defendants cannot be estopped from arguing that the *Kirkman* decision should be considered as persuasive legal authority. Indeed, it would be odd – and more than a little arrogant – for this Court *not* to consider the detailed analysis of another judge with respect to AMC's MAGR definition for the same television series at issue in this case, albeit with a different set of contracts.

Second, Plaintiffs argue that a finding that AMC's MAGR definition is "binding" – that is, that there is no right of post-contractual negotiation – "would not impact any of Plaintiffs' claims." (Id. at 3.) They state that they "do not assert – and have never asserted – that AMC Studios' MAGR definition is 'unenforceable,'" and that "[o]f course Darabont's agreement provides that MAGR 'shall' be defined by AMC Studios." (Id.) Accordingly, "Defendants' request for a ruling that their MAGR definition is 'binding' has no bearing on Plaintiffs' contract claims in [this case]." Instead, Plaintiffs argue, the question is whether AMC's MAGR definition conflicts with "express promises set forth in the 2010 Agreement and the Season 2 Amendment in defining MAGR." (Id.) The latter point is undisputed, at least in principle. Defendants agree that the specific protections for Plaintiffs in the Agreements with respect to MAGR control over any subsequent definition proffered by AMC. (They disagree that the Affiliate Transaction Provision is such a protection, but that is not at issue in this case.)

The question that had been debated in the summary judgment papers was whether Plaintiffs were *also* entitled to negotiate the MAGR terms more generally based on references to post-contractual negotiations in the Agreements themselves. Indeed, as noted above, that was Plaintiffs' *lead* argument in opposition to summary judgment.

Based on the briefing and the oral argument on the motion for reargument, it has become clear that: (i) Plaintiffs do not (or no longer) dispute that AMC's MAGR definition is binding and enforceable, without regard to subsequent negotiation, subject to express limitations contained in the agreements (Pl. Op. at 3, 4, 14, 18); (ii) Plaintiffs are not pursuing a claim based on any failure by Defendants to negotiate in good faith the terms of AMC's proffered MAGR definition (Tr. at 36-37); and (iii) it was not necessary for the Court to reach the question of whether the Agreements require post-contractual negotiation of AMC's MAGR definition in deciding Defendants' motion for summary judgment (*id.* at 37, 44-46, 54).

Accordingly, given that the Court apparently "misapprehended" Plaintiffs' arguments in opposition to summary judgment, the Court grants Defendants' motion for leave to reargue their motion for summary judgment. However, the Court is not persuaded that Defendants' arguments warrant a change in outcome, as will be explained in its revised decision denying Defendants' motion for summary judgment. It is, therefore,

ORDERED that Defendants motion for leave to reargue and, upon reargument to grant their motion to dismiss, is granted in part and denied in part; it is further

ORDERED that the April 10 Order (NYSCEF Doc. No. 326) is withdrawn and will be superseded and replaced by a revised decision and order denying Defendants' motion for summary judgment.

This constitutes the decision and order of the Court.

12/31/2020

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

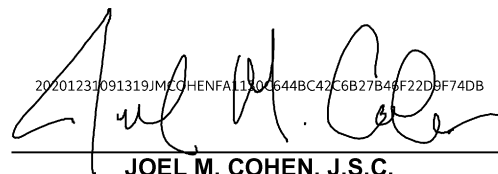
FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

20201231091319JMCCHENFAL100644BC42C6B27B44F22D9F74DB


JOEL M. COHEN, J.S.C.