

Judgments of Tokyo District Court, 29th Civil Division

Date of the Judgment: 2006.12.27

Case Number: 2004(Wa)No.13725

Title (Case):

A case wherein, the court dismissed both the claims for injunctions and payment of damages made by the plaintiff based on the copyright in cinematographic works.

Summary of the Judgment:

In this case, the plaintiff company, X, which asserts that it holds the copyright of movies called the Space Battleship Yamato series (the “Movies”), including, “Space Battleship Yamato” and “Farewell to Space Battleship Yamato,” asserted as follows: (i) Y1, Y2 and Y3’s act (hereinafter these companies are collectively referred to as the “Three Defendants”) of manufacturing and selling *pachinko* pinball machines and *pachisuro* slot machines using part of the images of the Movies by reproducing or adapting them (the “Defendant’s Images”) infringed X’s right of reproduction or right of adaptation in the Movies; and (ii) Y4’s act of producing and providing the Three Defendants with raw images based on which the Defendant’s Images were prepared, constituted and made Y4 liable for, the joint tortious act of the aforementioned copyright infringement with the Three Defendants. Based on these assertions, the plaintiff claimed for injunction against manufacturing and selling said *pachinko* pinball machines, etc. by the Three Defendants under Article 112 of the Copyright Act and payment of damages by Y4 for infringement of the right of reproduction or right of adaptation (under Articles 709 and 719 of the Civil Code).

The Three Defendants and Y4 (hereinafter referred to as the “Defendants”) and the assisting interveners argued as follows: (i) Although the plaintiff company asserts that it has received transfer of the copyrights from A who is the maker of the Movies, A is not the maker of said Movies and thus has not held said copyrights; (ii) Even if A holds said copyrights, the right of adaptation in the Movies has not been transferred under the contract and therefore the plaintiff has not obtained the right of adaptation; (iii) The images used in the aforementioned *pachinko* pinball machines and *pachisuro* slot machines that were manufactured and sold by the Three Defendants, do not fall under reproduction or adaptation of the Movies; (iv) Under the agreement entered into between the plaintiff and the assisting intervener P, the plaintiff is not allowed to exercise its rights against said *pachinko* pinball machines, etc. manufactured and sold by the Three Defendants.

The court first examined the issue of whether the plaintiff has acquired the copyrights in the Movies. It found that, from the evidence produced in this case, A cannot be found to be the maker of the Movies and that the plaintiff has only argued that it has received transfer of the copyrights from A who had acquired said copyrights as the maker thereof under the contract and has not asserted nor proved that it has received copyrights from the true maker of the Movies in the case that A was not the maker of the Movies. Thus, the court concluded that X cannot be found to have acquired the copyrights in the Movies.

Then, the court examined whether X can be regarded as having acquired the right of adaptation in the Movies, if A had been the maker of the Movies or A had received transfer of the

copyrights in the Movies from the true maker of said Movies. It found that the “particular reference” in the meaning of Article 61, paragraph 2 of the Copyright Act on the right of adaptation may not be found and that there were no agreements on the inclusion of the right of adaptation in the objects of transfer in the contract despite absence of “particular reference” or other special circumstances. In conclusion, the court determined that the right of adaptation in the Movies cannot be deemed to be transferred by this contract and therefore X cannot be found to have acquired said rights in the Movies.

Furthermore, the court examined whether the images of Space Battleship Yamato used by the Defendants can be regarded as reproductions of the Movies, if A had been the maker of the Movies or A had received transfer of the copyrights in the Movies from the true maker thereof and X had accepted transfer of the rights of reproduction in the Movies. Also regarding this issue, it found that no coidentity can be found between the defendants’ images and the Movies, and concluded that the defendants’ images cannot be deemed as reproductions of the Movies.

Holding as above, the court dismissed X’ s claim.

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