

Judgments of Tokyo District Court, 47th Civil Division

Date of the Judgment: 2006.7.11

Case Number: 2006(Yo)No.22044

Title (Case):

A case wherein the court finds the period of protection for the movies made public in 1953 to have expired

Summary of the Judgment:

The obligee produced a movie entitled “Roman Holiday” and another movie entitled “Stalag 17” (the “Movies”), and first made them public in 1953 in the United States. The obligor manufactures reproductions of the Movies in the form of DVDs and distributes the DVDs at low prices in Japan.

In this case, the obligee, alleging that the obligor infringes the obligee’ s copyrights in the Movies (right of reproduction and right of distribution) by manufacturing and distributing the DVDs, seeks a provisional disposition based on the copyrights to stop the obligor’ s manufacturing and distribution and to place the DVDs in the court enforcement officer’ s custody. The point of issue in this case is the period of copyright protection for the Movies, with the obligee arguing that the period of protection for the Movies has been extended pursuant to Act No. 85 of 2003 (the “Revision Act”) and the obligor arguing that the copyrights in the Movies no longer existed at the time of the enforcement of the Revision Act.

With regard to the period of protection for the Movies, the court held as follows:

“The period of protection for the Movies shall be calculated from 1954, the year following the year in which the Movies were made public (Article 57 of the Copyright Act). In accordance with Article 54, para.1 of the Copyright Act prior to the revision, which provides that the copyright in a cinematographic work shall continue to subsist until the end of the fifty year period following the making public of the work, the copyrights in the Movies are, by means of calculation by calendar day (Article 143, para.1 of the Civil Code), to continue to subsist until the end of the fiftieth year following the making public, the year 2003. Since the period shall expire at the end of the last day of such period (Article 141 of the same Code), the copyrights in the Movies shall, under the Copyright Act prior to the revision, be extinguished by reason of the expiration of the duration thereof at the end of the last day of the year 2003, December 31, 2003. The Revision Act came into effect as from January 1, 2004 (Article 1 of the Supplementary Provisions), and Article 2 of the Supplementary Provisions of the Revision Act contains the phrase ‘at the time of the enforcement of this Act.’ The ‘time of the enforcement (of this Act)’ in this phrase refers to January 1, 2004, the effective date under Article 1 of the Supplementary Provisions.

The provision of Article 2 of the Supplementary Provisions can be construed to be intended to apply different treatments in enforcement between cinematographic works for which copyrights under the Copyright Act prior to the revision still exist as of the effective date of the Revision Act, January 1, 2004, and cinematographic works for which copyrights under the Copyright Act prior to the revision no longer exist as of that date.

As explained above, since the period of protection for copyrights in the Movies shall, pursuant to the Copyright Act prior to the revision, expire at the end of December 31, 2003, these copyrights under the Copyright Act prior to the revision no longer existed as of the effective date of the Revision Act, January 1, 2004. Consequently, pursuant to Article 2 of the Supplementary Provisions of the Revision Act, the provisions of the Revision Act shall not apply to the copyrights in the Movies, and the provisions then in force shall remain applicable to them. Therefore, it should be concluded that the copyrights in the Movies have been extinguished by reason of the expiration of the duration thereof.”

The obligee also argues that December 31, 2003, 12:00 p.m., is the same point of time as January 1, 2004, 0:00 a.m. In response to this argument, the court held as follows: The provisions of Article 54, para.1 and Article 57 of the Copyright Act are to “define a period by … the year” (Article 140 of the Civil Code), rather than “defining a period by the hour” (Article 139 of the same Code). Since a period defined by the year shall “expire at the end of the last day of such period” (Article 141 of the same Code), the base unit for determining the expiration of the period of protection shall be the “day.” According to this reasoning, the interpretation of the obligee and the view of the Agency for Cultural Affairs with regard to the application of Article 2 of the Supplementary Provisions of the Revision Act cannot be accepted based on the construction of the language in the provision of the said Article. Holding as above, the court dismissed the obligee’s application.

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