

SUPREME COURT OF NOVA SCOTIA

Citation: Bull Run Productions Inc. v. Wild TV Inc.,
2016 NSSC 315

Date: 20161220

Docket: Hfx. No. 451108

Registry: Halifax

Between:

Bull Run Productions Inc. and Peter Roderick MacIsaac

Plaintiffs

v.

Wild TV Inc.

Defendant

Library Heading

Judge: The Honourable Justice Robert W. Wright

Heard: November 10, 2016 in Halifax, Nova Scotia in Chambers

Written Decision: December 20, 2016

Subject: Forum selection clause in a commercial contract – scope of application and whether enforceable?

Summary: Between 2009 and 2012, Bull Run Productions Inc. entered into three successive licensing agreements with Wild TV to have the “Best of Bull Run” episodes (an outdoors show which it produced) aired on the Wild TV media network through affiliated distributors. The last of those three agreements expired in 2012.
All three licensing agreements contained a forum selection clause which stipulated that any legal proceeding involving or arising out of the agreements was to lie solely and exclusively in the appropriate courts in Edmonton, Alberta (where Wild TV carries on business).

In early 2016, the principal of Bull Run Productions discovered that Wild TV was airing some of its episodes which was long after the expiry of the license periods set out in the agreements. As a result, Bull Run Productions brought this action against Wild TV which is framed in copyright infringement as the sole cause of action. Wild TV thereupon brought this motion in Chambers to have the action dismissed for want of jurisdiction or, alternatively, staying this proceeding to give effect to the forum selection clause.

Issues:

Wild TV has raised the following issues for determination:

1. That the forum selection clause in the agreements should be upheld which specifies that the jurisdiction and venue of any legal proceeding involving or arising out of the agreements is to lie solely and exclusively in the appropriate court located in Edmonton, Alberta;
2. In the alternative, that this court lacks territorial competence under the provisions of the *Court Jurisdiction and Proceedings Transfer Act* (“CJPTA”), and
3. In the further alternative, if this court does have territorial competence, it should decline to exercise it pursuant to s.12 of the CJPTA on the ground that the court in Alberta is a more appropriate forum in which to hear this proceeding.

Result:

Having regard to the very broad language of the forum selection clause, and the fact that the potential defences and counter claim anticipated to be raised by Wild TV are linked to the licensing agreements, the Court was persuaded that this legal proceeding can safely be said to involve the licensing agreements such that the forum selection clause encompasses

the present dispute.

Although this court was found to have jurisdiction over the present dispute, the Court made the discretionary decision not to exercise that jurisdiction because the plaintiff is unable to show “strong cause” that the forum selection clause should be departed from. The appropriate remedy to be granted was therefore a judicial stay of proceedings.

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