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Contracts—Recording Requirements of Agreements Involving Motion Pictures and Allied Rights

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In reversing New York's highest court, the Supreme Court cited the case of *N.A.A.C.P. v. Alabama*,[74] and held that regardless of whether a state acts through its legislature (as in the first phase of this case), or through its judiciary (as in the present phase), it is still the application of state power to religious matters, and is in violation of the Fourteenth Amendment.

Those cases which are concerned only with whether a given action of a state or the Federal government violates the Constitution are usually difficult of decision. Therefore when a case is compounded by the entrance of a foreign government into the picture (especially that of the Soviet Union) in addition to a state or the Federal government, the decision is made even more difficult. While the competing interests of this case, i.e., checking the influence of communism on the one hand and preserving separation of church and state on the other, may incline one to choose the former at the expense of the latter, the correctness of the view taken by the Supreme Court is best expressed by Justice Reed in the *Kedroff* case and by Chief Judge Desmond dissenting in the present case.

Justice Reed stated that "Legislative power to punish subversion cannot be doubted. If such action should be actually attempted by a cleric, neither his robe nor his pulpit would be a defense."[75]

In a parenthetical remark, Chief Judge Desmond said, "(Rejection by our courts of the Patriarch's nominee for the archbishopric is the same kind of interference with religion of which we accuse the Soviet authorities)."[76]

CONTRACTS

Recording Requirement of Agreements Involving Motion Picture and Allied Rights

A copyright may be assigned, conveyed, or mortgaged.[1] Every assignment of a copyright must be recorded in the United States Copyright Office. If an assignment is not recorded, it is void as against a subsequent purchaser or assignee who pays valuable consideration for the copyright without notice of the first assignment.[2] In the case of *Vidor v. Serlin*,[3] the principal issue confronting the Court of Appeals was whether the second assignment of a copyright, which had been recorded pursuant to 17 U.S.C. Section 28, took priority over a previous agreement which had not been recorded. The trial court held that the plaintiff, the subsequent assignee, was the sole and exclusive owner

74. 357 U.S. 449 (1958).
75. Supra note 63 at 109.
76. Supra note 61 at 220, 196 N.Y.S.2d 676 (1959).

1. 17 U.S.C. § 28.
2. 17 U.S.C. § 30. See Photo-Drama Motion Picture Co., Inc. v. Social Uplift Film Corp., 220 F. 448 (2d Cir. 1915).
3. 7 N.Y.2d 502, 199 N.Y.S.2d 669 (1960).

of the copyrighted work. The Appellate Division and the Court of Appeals affirmed.[4]

In 1954 the plaintiff contracted with Nijinsky for all of her rights in two copyrighted books. Coupled with this contract, the plaintiff also received an assignment of the same rights, and this document was properly recorded in the United States Copyright Office. In 1940 Nijinsky had entered into an agreement with the defendant Bass to confer to him the motion picture and allied rights in the copyright and to appoint him as her booking agent for a lecture tour. Bass subsequently assigned his rights under the agreement to the defendant Serlin, but neither of these agreements were recorded. The defendants argued that the Nijinsky-Bass agreement was merely a license which did not have to be recorded pursuant to the statute, and that the plaintiff took his assignment with notice of the prior rights of the defendants.

The trial court found that the Nijinsky-Bass agreement as well as the Bass-Serlin assignment should have been recorded. The Court of Appeals upheld this finding and dismissed the argument that the Nijinsky-Bass agreement was a mere license because of the express language in the agreement indicating that it was an assignment. A book, a motion picture based on the book, or a drama based on the book can each be copyrighted. Each of these copyrights can be separately assigned and must be recorded to provide constructive notice to subsequent assignees.[5] In addition, testimony at the trial indicated a custom of the motion picture industry to record all conveyances of motion picture rights. Therefore, the failure of Bass to record his agreement with Nijinsky gave the plaintiff priority in his claim, so long as the plaintiff had neither actual nor implied notice of the defendants' rights in the books. The Court of Appeals found that the evidence supported the trial court's finding that the plaintiff had no such notice.

The defendant Serlin, in addition to answering the plaintiff's claim, served on Nijinsky a cross-complaint in which he requested damages from her for having sold twice the rights in question. The trial court failed to pass on this second issue, but held that the assignment from Bass to Serlin was ineffective. The Appellate Division, in modifying the judgment, dismissed the cross-complaint, for the dramatic rights were not separately assignable without the owner's consent,[6] and there was not sufficient evidence to show consent or ratification by Nijinsky. Whatever rights Serlin or his assignor might have acquired were lost as a result of the breach of Bass' managerial obligations,[7] in that no lecture tours were booked pursuant to the contract.

In affirming the modified judgment of the Appellate Division, the Court of Appeals indicated that the consent of Nijinsky to the Bass-Serlin assign-

4. 7 A.D.2d 978, 184 N.Y.S.2d 482 (1st Dep't 1959).
5. Photo - Drama Motion Picture Co., Inc. v. Social Uplift Film Corp., supra note 2.
6. Delaware County v. Diebold Safe & Lock Co., 133 U.S. 473, 488 (1889).
7. Paige v. Faure, 229 N.Y. 114, 127 N.E. 898 (1920).

ment was indispensable. As to the necessity for consent, it is not entirely clear from the opinion whether the Court proceeded on the theory that the contract involved personal services, the hiring of Bass as a booking agent, or that the contract conveying dramatic rights was of such a character that it was non-assignable without the consent of the original owner.[8] The fact that Bass did nothing to secure lecture engagements and thereby breached his managerial obligations is available not only to Nijinsky but also to the plaintiff and affords another ground for giving priority to plaintiff's claim.[9]

INTERPRETATION OF LEGAL PARTNERSHIP AGREEMENT

It is settled law in New York State that as between the statutory partnership laws and a partnership agreement, the latter is controlling.[10] From this it follows that unless a partnership agreement establishes a different relationship between the partners, a partner, upon dissolution of a partnership, is entitled to what he would have received on dissolution under the Partnership Laws.[11]

The Court of Appeals in *Jackson v. Hunt, Hill and Betts*,[12] construed a partnership agreement. It held that the plaintiff, who withdrew from a law firm located in New York City, was entitled not only to his share of the fees paid to the firm prior to the date of withdrawal, but also to all fees earned but unpaid, whether billed or unbilled, on the date of his withdrawal. This decision reversed a judgment of the Appellate Division,[13] dismissing plaintiff's amended complaint. The Appellate Division had reversed an interlocutory judgment entered upon a decision by the Supreme Court,[14] ordering an accounting in favor of plaintiff.

The decision of the court revolved around whether the term "Net profits" as used in the partnership agreement included fees that were earned but uncollected, or only such as were already collected by the firm at the time when the partner withdrew.

The Court relied on the meaning the partnership agreement intended in using the term "net profits." This term was defined as "net fees" less 10% allocated to the capital account. "Net fees" in turn was defined under Article III of the agreement as the balance remaining after expenses of the firm incurred for that year were subtracted from the gross fees earned by the firm for that year. This indicated to the court that "net fees" were determined on

8. *Ibid.*
9. Israel v. Wood Dolson Co., 1 N.Y.2d 116, 151 N.Y.S.2d 1 (1956).
10. In re Eddy, 290 N.Y. 677, 49 N.E.2d 628 (1943); Lanier v. Bowdoin, 282 N.Y. 32, 24 N.E.2d 732 (1939); Hermes v. Compton, 260 App. Div. 507, 23 N.Y.S.2d 126 (2d Dep't 1940).
11. N.Y. Partnership Law ch. 39, § 1 et seq.
12. 7 N.Y.2d 180, 196 N.Y.S.2d 647 (1959).
13. 4 A.D.2d 414, 187 N.Y.S.2d 168 (1st Dep't 1959).
14. 12 Misc. 2d 797, 177 N.Y.S.2d 388 (Sup. Ct. 1958).