

SEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 07-1895-VBF(PJWx)**

Dated: **October 3, 2008**

Title: Starz Entertainment, LLC -v- Buena Vista Television, Inc.

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Rita Sanchez
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS): RULING ON PLAINTIFF STARZ'S MOTION FOR SUMMARY JUDGMENT ON DEFENDANT BVT'S COUNTERCLAIMS OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT ON CLAIMS AND ISSUES

At the September 18, 2008 hearing, the Court prepared and distributed a Tentative Ruling on Plaintiff Starz Entertainment, LLC's ("Starz's") Motion for Summary Judgment on Defendant Buena Vista Television, Inc.'s ("BVT's") Counterclaims in which it tentatively granted the Motion in part and denied the Motion in part. After hearing oral argument, as well as further considering the evidence, the parties' papers and the case law, the Court hereby GRANTS Starz's Motion in its entirety as to all of BVT's counterclaims. The Court will execute the Proposed Judgment submitted by Starz.

The Court adopts its Tentative Ruling granting Starz's Motion as to: (1) BVT's first cause of action for Breach of Contract on the issue of whether Starz breached its obligations regarding the

distribution and exhibition of licensed pictures on certain “tiers; and (2) BVT’s third cause of action for copyright infringement.

The Court, however, vacates its Tentative Ruling as to BVT’s first cause of action for Breach of Contract on the issue of whether Starz has repudiated its obligations relating to “rent-a-system” films and enters an order GRANTING Starz’s Motion on this issue, as well as on the entirety of BVT’s first cause of action. The Court finds that there is no genuine issue as to any material fact and Starz is entitled to judgment as a matter of law, after further consideration of the case law and evidence. (*See* Turner Decl. Exhs. D, G.) The Court finds that the statements made by Mr. Ziffren in his letters do not rise to the level of a “clear, positive, unequivocal refusal to perform.” *Taylor v. Johnston*, 15 Cal. 3d 130, 137 (1975); *see also Pacific Coast Engineering Co. v. Merritt-Chapman & Scott Corp.*, 411 F.2d 889, 894 (9th Cir. 1969) (“the refusal to perform must be of the whole contract or of a covenant going to the whole consideration, and must be distinct, unequivocal, and absolute”); CACI 324.

Similarly, for the reasons set forth herein and in Starz’s moving papers, the Court vacates its Tentative Ruling on BVT’s second cause of action for Breach of the Covenant of Good Faith and Fair Dealing and GRANTS Starz’s Motion on this claim.

Finally, the Court vacates its Tentative Ruling on BVT’s fourth cause of action for Declaratory Judgment. In light of the foregoing rulings, the Court finds that there is no actual controversy between the parties. The Court, therefore, GRANTS Starz’s Motion as to BVT’s fourth cause of action.

IT IS SO ORDERED