

Marilyn ANDERSON and Walter Berk, Plaintiffs,

v.

PARAMOUNT PICTURES CORPORATION, et al., Defendants.

No. CV-83-7051 CBM.

United States District Court, C.D. California.

February 13, 1985.

John F. Denove, Cheong & Denove, Los Angeles, Cal., for plaintiffs.

William Billick, Rosenfeld, Meyer & Susman, Beverly Hills, Cal., for defendant Paramount Pictures, T. Harris and H. Weingrod.

Kenneth E. Kulzick, William E. Stoner, Lillick McHose & Charles, Los Angeles, Cal., for defendants Aaron Russo Productions, Aaron Russo and Irwin Russo.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

CONSUELO BLAND MARSHALL, District Judge.

FINDINGS OF FACT

1. This is a civil action, filed on November 1, 1983 for copyright infringement, breach of implied contract, breach of confidence and unjust enrichment. Plaintiffs are Marilyn Anderson and Walter Berk (Plaintiffs). Defendants are Paramount Pictures Corporation (Paramount), Aaron Russo Productions, Aaron Russo, Irwin Russo, Timothy Harris (Harris), and Herschel Weingrod (Weingrod).
2. Plaintiffs are individuals who reside in California. Ms. Anderson is a professional writer.
3. Defendants Harris and Weingrod are individuals who reside in California. Harris and Weingrod are professional writers. Aaron Russo and Irwin Russo are producers of motion pictures.
4. Defendant Paramount is a Delaware corporation with a place of business in California. Paramount is a well-known producer and distributor of motion pictures.
5. Plaintiffs are the authors of a screenplay entitled "High Stakes" which was conceived and written after 1975 and before 1981. For purposes of their motion, the defendants concede

that the screenplay was properly registered with the U.S. Copyright Office on February 11, 1981.

6. "High Stakes" is a romantic melodrama set in New York City about a lonely woman executive, Hannah Hartley, who makes a wager with her best friend, Carole Taylor, that she can train an uneducated white man in six months to appear sufficiently genuine as an entrepreneur to fool her company's board of directors. Eddie Debellis is the scruffy-looking young man with a heavy Brooklyn accent who is the subject of Hannah's attempts to create a "new" person and with whom Hannah falls in love.

7. The motion picture "Trading Places" was conceived, produced and publicly exhibited by the defendants after September 1981. "Trading Places" is a social comedy set in Philadelphia. The plot concerns a double bet between two elderly, wealthy brothers, Randolph and Mortimer Duke, to resolve the "eternal" heredity versus environment debate, and the revenge sought by the two subjects of their bet. Specifically, the Duke brothers bet that, if given the opportunity, Billy Ray Valentine, a black derelict, would manage successfully their commodities investment company. They also bet that Louis Winthorpe, a successful white investment broker at their company, would take to crime if faced with sudden misfortune and poverty. After Billy Ray and Louis discover that they have been the subjects of this bet, they become allies and together find revenge against the Duke brothers through a commodity market manipulation scheme.

8. The basic theme/premise of "High Stakes" is two-fold. First, it is about a wager between two female friends that one of them can train an uneducated man to appear to be an entrepreneur in six months. Second, it is about the development of a love affair between a lonely woman and the subject of her wager.

9. The basic theme/premise of "Trading Places" is three-fold and very different from "High Stakes". First, "Trading Places" is about a *double bet* between two brothers that a successful executive would become a criminal *and* that a derelict could become a successful executive, *if they simply "traded places"*. (The entire story in "Trading Places" occurs within several weeks.) Second, after the subjects discover the bet, they form an alliance and together seek revenge through a successful commodity market manipulation scheme. Finally, "Trading Places" has a strong social commentary or satirical theme/premise resulting from Billy Ray being black and Louis being white — specifically, an uneducated black can succeed if given an opportunity and an educated white will turn to crime if subjected to misfortune. ("Trading Places" was initially entitled "Black & White" during development.)

10. There is no meaningful similarity between the dialogue and settings in the two works, except for some common and stereotypical phrases and terms and except that both are set in cities. ("High Stakes" is set in New York City and "Trading Places" is set in Philadelphia.)

11. The mood and pace of the two works are dissimilar. "Trading Places" is a fast-paced social comedy that takes place within a few weeks. "High Stakes" is a slow-paced romantic melodrama with no comedy, that takes place over six months.

12. The plot and sequence of the works are dissimilar, except that they both contain the general "transformation" sequence (finding the subject of the bet, "transforming" him and his ultimate success in his new life).

13. Some of the similarities that do exist between "High Stakes" and "Trading Places" are unprotectible because they are *Scenes à faire* — incidents, characters or settings that naturally flow from or are standard to the treatment of certain ideas and themes. Common elements which constitute *scenes à faire* include the following: the two wealthy characters who make the bet drive around in a limousine and have a butler and chauffeur; people toast with champagne at celebrations.

14. With respect to the few random scenes or elements which are similar in both "High Stakes" and "Trading Places" which are not described above, they are random, insignificant, have no pertinence to the "total concept and feel" of the works and would not lead an ordinary lay observer to believe one work is the "dramatization or picturization" of the other. By way of illustration, both works have a character who pretends to be blind with dark glasses and a cup, who is later revealed as not blind; in both works the wealthy bettors bribe the subject of the bet to enter their limousine and the subjects then initially think that the bettors may be interested in sex; finally, in both works wallets contain credit cards, people chew gum, houses have fireplaces, men shave and passing references are made to Harvard, the Russians and unemployment.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this civil action pursuant to §§ 1331 and 1338 of Title 28 of the United States Code.

2. The "ideas" of "High Stakes" and "Trading Places" are not substantially similar as a matter of law. A comparison of the plots, themes, dialogue, mood, setting, pace and sequence of the works reveals no similarities which are of significance as a matter of copyright law.

3. The "expression" of the ideas in "High Stakes" and "Trading Places" is not substantially similar as a matter of law. No reasonable jury or ordinary lay observer could consider the motion picture "Trading Places" a "dramatization or picturization" of the screenplay "High Stakes". Neither could a reasonable jury find the "total concept and feel" of the works to be substantially similar. The concrete patterns of the works as a whole are quite different. The interplay between the characters and sequence of incidents also are not similar.

4. No ordinary reasonable observer would find either that "Trading Places" reflects the total concept and feel of "High Stakes" or that "Trading Places" is a picturization or dramatization of "High Stakes".

5. There is no genuine issue that defendants infringed plaintiffs' copyright. Defendants are entitled to a partial summary judgment with respect to plaintiffs' copyright claim. Plaintiffs' claim for copyright infringement shall be dismissed with prejudice.

6. Plaintiffs shall take nothing and be afforded no relief herein. Plaintiffs' pendent state claims shall be dismissed without prejudice.

7. Defendants are entitled to attorneys' fees and costs they have incurred and expended in defending against the complaint herein.