

118 A.D.3d 465 (2014)

986 N.Y.S.2d 483

ESTATE OF ANTHONY LAZZARINO, Deceased, Appellant,

v.

**WARNER BROS. ENTERTAINMENT INC. et al., Respondents, et al.,
Defendant.**

12695N, 602029/05.

Appellate Division of the Supreme Court of New York, First Department.

Decided June 5, 2014.

Concur — Friedman, J.P., Acosta, Saxe, Feinman and Gische, JJ.

The court properly determined that the proposed breach of contract claim against the Warner Brothers defendants, asserting breach of an agreement to pay proceeds of a film made by a third party, is devoid of merit (*see MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]). The agreement does not contemplate such a payment. Further, to the extent plaintiff asserted that Warner Brothers violated plaintiff's predecessor-in-interest's "right to match," the claim is barred by the statute of limitations (*Lazzarino v Warner Bros. Entertainment, Inc.*, Sup Ct, NY County, Sept. 15, 2008, Fried, J., index No. 602029/05).