



International Chamber of Commerce

The world business organization

ICC Dispute Resolution Services – ADR

5th ICC International Commercial Mediation Competition – 2nd session

Mr./Ms. WALLACE

GENERAL INFORMATION

Mr./Ms. Wallace is an actor/actress of French-American nationality who has played leading roles in many popular films and is well-known and well-liked throughout the world for the quality of his/her cinema roles. In the 1990s, s/he had the leading role in a series of 3 films produced in France which were moderately successful. The first film, “Retour vers le passé”, came out in French cinemas in 1990 and the sequels “Retour vers le passé n° 1” and “Retour vers le passé n° 2” came out in France in 1992 and 1995. The French production company, “Les Productions de la Nouvelle Vague” (PNV), had a contract signed with Mr./Ms. Wallace setting out a fixed lump sum payment of 3 million Francs for the shooting of each of the 3 films (approximately US\$ 450 000 per film). However, the contract did not provide for any clause to pay the actor/actress on DVD sales of the film, neither in France nor abroad.

PNV sold the worldwide commercial rights to a United States production company called Metro Worldwide Company (MWC). MWC distributed the 3 films in United States cinemas, and following their success in the United States, it released the 3 films for sale to the public on DVD. The first DVDs began to be sold in France in 1992 and in the United States in 1998. In 2008, the actor/actress Mr./Ms. Wallace asked the production company PNV for information regarding the revenue generated by the DVD sales and the sales percentages due to him/her.

PNV refused to provide sales figures for France and the United States and pointed out to the actor/actress that it did not have to pay him/her anything whatsoever on DVD sales. PNV indicated that sales in France were limited, while sales in the United States were very considerable. It asked Mr./Ms. Wallace to contact directly MWC to obtain payment for the sums claimed. Mr./Ms. Wallace therefore asked MWC, which replied that s/he should contact PNV, as it was not itself responsible vis-à-vis Mr./Ms. Wallace.

The law firm hired by Mr./Ms. Wallace to act on his/her behalf decided to initiate legal proceedings against MWC, considering that the contract concluded between PNV and MWC resulted in the transfer of all obligations to pay royalties on DVD sales. Upon hearing the action taken by Mr./Ms. Wallace’s lawyers, the French actors’ association “Association des Artistes Interprètes” (AAI) decided to become voluntarily involved in the

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legal proceedings, in support of Mr./Ms. Wallace, and in the general interests of the profession. MWC's lawyers offered to go to mediation and informed the court of this. The French court, to which this dispute was referred on the agreement of the other party, ordered mediation, considering it as an appropriate measure. The Court therefore appointed ICC (International Chamber of Commerce) as the mediation centre with responsibility for setting up the mediation and appointing the mediator.

According to information in his/her possession, Mr./Ms. Wallace considers that sales of DVDs in the United States represent a turnover of US\$ 10 million. S/he therefore officially claims the sum of 1 million dollars, which represents 10% of this turnover. S/he also claims the sum of US\$ 1 million for damage to his/her image and reputation. S/he claims no sums from the French company, PNV, as s/he considers that sales in France were not significant.

MWC is a famous production company of considerable size established in 1924 and is well-known for numerous popular productions. MWC is not usually involved in legal disputes with actors as general contracts signed with them are comprehensive in nature and provide for all eventualities, which is not the case with the contract signed by Mr./Ms. Wallace and PNV. MWC has agreed to pay a proportion of its profits, but not of its turnover, as it states that in this regard, the turnover realised was absorbed by more than 60% for distribution costs and by more than 30% for its own operating costs. MWC has therefore indicated that of a total turnover of more than US\$ 10 million, the net profit realised amounts to 1 million dollars. It therefore proposes to pay a percentage of 10% on the net profit, i.e. US\$ 100 000.

MWC objects to the involvement of the AAI, which recommends that the actor/actress be paid 5% of the Producer's Net Receipts (i.e. on the turnover realised with the sole deduction of film distribution costs, namely 5% of US\$ 4 million = US\$ 200 000). MWV indeed considers that the French association has no authority to enforce anything upon a United States company. The AAI considers that its proposal is in keeping with a collective agreement signed between the various representatives of film producers and performers in 1982 and that PNV must adhere to this agreement and that, having signed a contract with PNV, MWC must likewise adhere to the same agreement.

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