TRANSCRIPT

Court records II C 236/06

Decision in the name of the Republic of Poland

Date: 5.06.2006

District Court in Warsaw, Civil Division II
Presiding judge: SSR Iwona Wiktorowska (delegation)
Court reporter: public prosecutor's traineeTomasz Kuroszczyk

Upon cognizance of the case on 15.05.2006 in Warsaw

Action brought by Stowarzyszenie Autorów ZAIKS/Society of Authors ZAIKS in Warsaw
Against "TAKT" – Kwiatkowski i Miądzel – Registered Partnership

For disclosing information

1) charges the defendant "TAKT" – Kwiatkowski and Miądzel – Registered Partnership with an obligation to pass on information on the released in 1997-2002 audiovisual carriers (sound and optical) to the plaintiff Society of Authors ZAIKS in Warsaw;
2) awards from the defendant "TAKT" – Kwiatkowski i Miądzel – Registered Partnership for the benefit of the plaintiff Society of Authors ZAIKS in Warsaw the amount of 2040 (two thousands and forty) PLN as means of the costs of court proceedings;
3) determines final court fee 600 PLN

Reasons for the decision

The plaintiff Society of Authors filed an action to oblige the defendant "TAKT" – Kwiatkowski i Miądzel – Registered Partnership to make information on the DVD carriers manufactured by this company available and to award reimbursement of the costs of representation in proceedings at law by the defendant for the benefit of the plaintiff. Initially the Society based their demands on the provision of Art. 105, Para. 2 of the Act of 4 February 1994 on Copyright and Neighbouring Rights. (Dz. U. No 80, item 904, with subsequent amendments).

Nest, in the procedural writ dated 23 October 2003 the plenipotentiary of the plaintiff extended the claim and filed to oblige the defendant to pass on the information on the manufactured by defendant carriers (VHS, DVD, VDS) during the previous five years - counting from the date of bringing an action to the court - which fixed the textual works, musical works, musical and textual works and choreographic works. The plenipotentiary of the plaintiff still based his claims on the Art. 105, Para 2 of The Act of 4 February 1994 on Copyright and Neighbouring Rights.

Finally, in his procedural writ the plenipotentiary of the plaintiff again modified his claim and filed to oblige the defendant to pass on information on manufactured audiovisual carriers (audio and optical) in the period of 5 years preceding the date of filing an action, i.e. for the years 1997-2002, basing the claim on the agreement dated 26 June 1996 and with reference to the Art. 105, Para. 2 of the aforementioned Act on Copyright and Neighbouring Rights.

The plenipotentiary of the defendant "Takt" Kwiatkowski and Miądzel Registered Partners all the time filed to dismiss the claim and to award from the plaintiff for the benefit of the sued partnership the remuneration of the costs of proceedings, however as the claim changed the arguments of the defendant were modified as well.

Basing on this inquisitorial procedure upon consideration the court established facts of the case as mentioned below.

On 26 June 1996 the plaintiff Society of Authors ZAIKS concluded with the defendant "TAKT" Kwiatkowski and Miądzel Registered Partnership an agreement (k.5 and 6). Under point VI of this agreement the parties agreed that the manufacturer would report to ZAIKS all reproductions and would inform about the name and address of a producer (party ordering), about catalogue number of a carrier, title of a carrier, type of a carrier, name of licensing copyright organization, name and address of a recipient, date of delivery, the name of agent or an agent representing the ordering party, and the name and address of the producer acting as sub-contracting party. According to this point of the agreement the manufacturer is obliged to send all information to ZAIKS, at least within a fortnight, counting from the end of a month in which an order is completed. This information includes information on audiovisual carriers about which making available filed the plaintiff in this case. It specifically concerns – as results from Point VI of the agreement dated 26 June 1996 – the information on VHS, DVD and VDS carriers.

Basing on those established facts the court considered the hereafter.

In the light of Art 105, Para 2 repeatedly quoted Act on Copyright and Neighbouring Rights, the organization of collective management may within its competences demand to furnish information and documents indispensable to determine the amount of the royalties and costs claimed.

Should a claim be based - as it is in this case - on the provisions of the Art. 105, Para 2 of the Act on Copyright and Neighbouring Rights, acceptance thereof is allowed exclusively when all conditions of this provision are fulfilled. This provision enacts relatively strict requirements.

On the basis of this provision the plenipotentiary of the defendant "TAKT" Kwiatkowski and Miądzel, Registered Partnership, raised several objections which, in his opinion, didn't allowe the claim in this case. Therefore he argued that the plaintiff Society of Authors ZAIKS in Warsaw was entitled only and exclusively to the collective management of the parts of audiovisual works which were used beyond the audiovisual works and on the carriers about which the plaintiff demanded information, are fixed audiovisual works being integral part. Besides, in the opinion of the counsel of the defence, the demand of information under Art. 105, Para 2 the Act on Copyright and Neighbouring Rights was reserved for the undergoing procedure in remuneration (in royalties). The defending party raised also that the presumption under Art. 105 Para 1 of the Act on Copyright and Neighbouring Rights may be refuted when for instance another organization for collective management of copyright claims the rights to the same work. The plaintiff in this case neither did state what kind of works they claimed nor that the works were under their protection. Finally, the plaintiff argued that the demand for information under Art. 105 Para 2 of the Act on Copyright and Neighbouring Rights might be directed exclusively against the party disseminating the work or against the party obliged to payment of royalties.

If the claim of information was based on the Article 105 Para. 2 of the Act on Copyright and Neighbouring Rights, all these objections would be essential, would require thorough scrutiny and undoubtedly would influence the decision issued. However, in view of the change of claim and basing on the demand for information in accordance the Agreement of 26 June 1996, which is binding for both parties, and with reference to Art. 105, Para 2 of the Act on Copyright and Neighbouring Rights the situation has diametrically changed.

In the light of the principle of contractual liberty, binding both in civil law and – as its integral part - in copyright law, parties may shape their relations at their discretion; it pertains not only to the sphere of peremptory norms (ius cogens). Any agreement which is contradictory to the peremptory norms is null and void (Art. 58 k.c.). Regulation pertaining to the demand for information included in the provision under Art. 105, Para 2 of the Act on Copyright and Neighbouring Rights has a notion of peremptory law. Therefore the parties may shape their relations in this sphere at their discretion; they may even diverge from the legal regulation in this sphere. Under these condition, the agreement of 26 June 1996 is determinant for the parties in this proceeding, even if the settlements included herein diverged from the regulations of Art 105, Para 2 of the Act on Copyright and Neighbouring Rights. Therefore the defendant partnership is obliged, in accordance with the point VI of the agreement from 26 June 1996, to provide the plaintiff with information, which has been undertaken under this agreement.

In the context of this contradictory obligation of the defendant partnership "TAKT" Kwiatkowski and Miądzel, only two last objections raised after the last change of claim and

basing on the claim of information should be investigated, i.e. the period of limitation and the premature claim action.

Neither of these charges shall be taken into consideration. The charge of premature claim is incorrect. In the light of the Art. 117, Para 1 k.c. only and exclusively pecuniary claims are subject to the statute of limitations. The claim to make information available has a non-pecuniary character. Therefore, irrespective of the character of agreement binding the parties this claim is not subject to the statute of limitations.

The charge that the claim is premature cannot be accepted as well. In the light of the prescription under the Art. 455 k.c., if the term to fulfill an obligation is not stated or it does not result from the character of obligation, it shall be fulfilled immediately upon the call for the debtor.

In this case the term to fulfill an obligation results from point VI of the agreement of 26 June 1996. The said point of agreement states that the sued partnership is obliged to provide the plaintiff ZAIKS in Warsaw with information within a fortnight counting from the end of a month in which the commission is performed.

But even if the aforementioned had not been agreed, even if in the court summons to provide the plaintiff with information persons not entitled had acted instead of the plaintiff– but in this case it is not questioned – even then the claim that it had been signed by declaration of will/intention on behalf of the plaintiff it would have replaced the claim to fulfill this benefit.

In the light of the aforementioned also the charge of premature claim shall not be accepted.

For all these reasons the claim must be accepted as it is grounded on the agreement of parties of 26 June 1996 under which the sued partnership obliged to inform the plaintiff ZAIKS in Warsaw. The court decided about costs of proceedings under article 98 k.p.c.