

EXHIBIT A



AMERICAN ARBITRATION ASSOCIATION®

CRTV v. Mark Steyn and Mark Steyn Enterprises
Mark Steyn, Mark Steyn Enterprises and Oak Hill
Media LLC v. CRTV and Cary Katz

01-17-0001-0996

Final Award

The Parties

The Claimant and Counterclaim Respondent in this matter is Conservative Review Television, LLC (CRTV).

The Respondents are Mark Steyn (Steyn) and Mark Steyn Enterprises (US) Inc. (MSE). Together they will be referred to as Steyn.

The Counterclaimants are Mark Steyn, Mark Steyn Enterprises (US) Inc. and Oak Hill Media Services, Inc. (Oak Hill).

Cary Katz (Katz) is the majority stockholder of CRTV and a Counterclaim Respondent.

Melissa Howes was the principal of Oak Hill and is Mark Steyn's business representative.

Background

Cary Katz is a successful businessman, who formed CRTV in 2014. In an email to Mellissa Howes, Katz described CRTV as follows: "CRTV streams original programs and content which feature news and commentary from a politically conservative perspective." Katz testified that there were three people he sought to form the core of CRTV; Michelle Malkin, Mark Levin and Mark Steyn. He was successful in recruiting Levin to join him at CRTV and also recruited Malkin, but he was repeatedly rebuffed from 2014 to 2016 by Steyn's business representative, Melissa Howes. She informed him that Steyn was not interested in doing a television show centered on American politics.

Katz was persistent. He had listened to Steyn guest host the Rush Limbaugh radio program and believed Steyn was a great voice for liberty. Katz knew little else of Steyn's background. He assigned one of his staff, Chris Crane, to research Steyn. His goal was to use that knowledge to pitch to Steyn a show Steyn would be interested in doing. Crane contacted people who worked for Mark Steyn and met with them to learn much about Steyn, his interests, preferences and his background.

CRTV also hired a prominent set designer to draw a conceptual rendering of the show's set. He designed a set with a chalet setting and various areas in which to film, including

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a cabaret which was outfitted with tables, a stage, and a bar.

Using the set design and the information he gathered, Crane, along with a CRTV producer, Jason Meath, produced a sizzle reel. Knowing that Steyn was not interested in doing an 'ordinary' political talk show, the sizzle reel was a video pitch of the show concept CRTV hoped would entice Steyn to join their operation. As Steyn testified, it made the difference in changing his mind. He felt, as he watched, that they were "inside his head."

The sizzle reel was shown to Steyn and Melissa Howes on April 9, 2016 at a meeting in Vermont, which Katz and CRTV had finally convinced Steyn to attend. The sizzle reel included renderings of a custom-built set and a narrator who described Steyn's various accomplishments and the show's concept:

Mark Steyn's already a worldwide presence: Appearing as a guest on TV. He's a bestselling author, writer, and journalist—is read in National Review, Investor's Business Daily, The Atlantic, Irish Times, Jerusalem Post.... And of course—as heard on the radio.... Conservatives know Mark Steyn from sitting in the chair for Rush [Limbaugh], [Sean]Hannity, and Hugh Hewitt; but isn't it time Mark Steyn gets his very own chair? Welcome to the Steyn Studio in Burlington, Vermont. Finally, viewers will be transported to Mark Steyn's inner sanctum of common sense politics, arts, culture, and so much more. A striking set incorporating everything important and beloved to the Steyn fan base.... And when things get too serious, there's always room - to get groovy.

The video focused on Steyn's interests; writing, the arts, culture, world politics, and music. The set shown in the sizzle reel was an extravagant rendering of the inside of a ski chalet with an attached cabaret complete with a stage for performers. The Cabaret was named 'Marvin's' using the name of Steyn's cat. Steyn could see himself in this show, just as he could not have seen himself in a conventional televised talk show in what he called the "conservative ghetto." The emails also reveal that, having spent a great deal of money defending a libel suit, Steyn needed money.

The Contract

Negotiations culminated in a Binding Term Sheet. In that term sheet, the Parties promised to cooperate and work with each other, but their ultimate responsibilities were divided. CRTV retained ultimate control of business decisions and Steyn retained creative control. CRTV was responsible for hiring a production staff and building a set in Burlington, Vermont. Steyn was responsible for delivering 200 shows a year, each 48 minutes long. His responsibility to deliver this content was to begin as soon as the Burlington studio was 'fully functioning.' In a separate letter memorandum, a related entity, Oak Hill Media, was retained and paid to provide services to Steyn. In a side agreement, Melissa Howes, the principal of Oak Hill Media at the time, and Steyn's business partner, was loaned \$750,000 by CRTV to purchase a house in the Burlington area. The contract was effective on July 1, 2016. The contract between CRTV and Steyn provided for an arbitration clause, the letter memorandum with Oak Hill Media did not.

Jurisdiction RE: Oak Hill Media

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The Claimant argues that the Arbitrator does not have jurisdiction over the claims Oak Hill, as a party, has asserted. Oak Hill bases its claim against CRTV on the letter memorandum. That letter memorandum is separate from the Binding Term Sheet executed by CRTV, Mark Steyn, and Mark Steyn Enterprises. The letter memorandum between CRTV and Oak Hill has its own integration and 'entire agreement clauses. Unlike the Binding Term Sheet, the Oak Hill letter memorandum has no arbitration clause.

Arbitration is a process which originates in a contractual agreement. A Party cannot be forced to submit to an arbitration proceeding in any dispute which the Party has not agreed to submit to arbitration. Oak Hill Media is a related LLC, owned by Steyn and Howes. Oak Hill and Steyn assert that CRTV has waived its arbitrability claim by participating in these proceedings and by substantively contesting and submitting evidence in relation to Oak Hill's claims. Oak Hill claims this conduct is a clear and unambiguous waiver of CRTV's jurisdictional claim.

CRTV has relied on *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, (1995), arguing that a Court, and not the arbitration panel, should decide whether a panel has jurisdiction over a dispute. CRTV argues that like the Kaplans who were Respondents, along with the company they owned, in a debt case, CRTV agreed only to arbitrate with Steyn, but not with Oak Hill. The U.S. Supreme Court found that whether or not the court could determine arbitrability depended on whether or not the Parties agreed to have an arbitrator determine arbitrability.

In *First Options*, the Kaplans justified their presence at the arbitration because they were the owners of the co-respondent. The Kaplans filed written objection to jurisdiction with the arbitration panel, which decided in favor of *First Options*. The Kaplans then sought to vacate the award, which was instead confirmed by the District Court. The case was appealed.

The Supreme Court found that a Party, who did not agree to arbitrate, should get a de novo review to preserve their rights. This review leads to a determination of whether or not the Parties agreed to arbitrate. The Court in *First Options* stated that in deciding whether the Parties had agreed to arbitrate, a court should apply "ordinary state-law principles governing contract formation." *Id.* One must determine, under state law, whether there is clear and unequivocal evidence that the Parties agreed to arbitrate.

Here, CRTV raised the lack of an arbitration agreement in its answer to the counterclaim. It did not however mention it by motion, nor in its pre-hearing brief, nor in its initial post-hearing brief. It was raised, for only the second time, in CRTV's reply brief.

It is true that CRTV was present at the hearing because it had originally brought the claim. It was also defending against Steyn's counter-claim. But CRTV went further in defending against Oak Hill's claim. It submitted exhibits to refute Oak Hill's damage claim and offered expert testimony to rebut its damages as well.

New York substantive law governs this matter. Under New York law, where a Party fails to seek a stay of arbitration prior to the hearing, that Party may not challenge the arbitrator's jurisdiction. *Allstate Ins. Co. v. New York Petroleum Ass'n Compensation*

Trust, 67 A.D.3d 479, 479 (1st Dep't 2009) (citing *Commerce & Indus. Ins. Co. v. Nester*, 90 N.Y.2d 255, 261-62 (1997)); *DeMartino v. New York City Dep't of Transp.*, 67 A.D.3d 479, 479 (1st Dep't 2009).

Similarly, under the FAA, “[a]n arbitrator derives his or her authority from the intent of the Parties ...” *Time Warner Cable of New York City, LLC v. Int’l B’hood of Elec. Workers*, 170 F. Supp. 3d 392, 410 (E.D.N.Y. 2016) (citing *Stolt-Nielsen, S.A. v. Animal Feeds Int’l Corp.*, 559 U.S. 662, 682-83 (2010)). By “submit[ting] an issue to arbitration, rather than seeking a stay, that Party has waived the right to challenge the arbitrators’ jurisdiction.” *Consolidated Rail Corp. v. Metropolitan Transp. Auth.*, No. 95 Civ. 2142, 1996 WL 137587 at *7, n. 6 (S.D.N.Y. Mar. 22, 1996) (citing *Halley Optical Corp. v. Jaguar Int’l Mktg.*, 752 F. Supp. 638, 639 (S.D.N.Y. 1990)); see also *Conn. Tech. Dev. Co. v. Univ. of Conn. Educ. Props., Inc.*, 102 F.3d 677, 685 (2d Cir. 1996) (“An objection to the arbitrability of a claim must be made on a timely basis, or it is waived.”); *Opals on Ice Lingerie v. Body Lines, Inc.*, 320 F.3d 362, 368 (2d Cir. 2003) (participating in arbitration proceedings without timely objection to arbitrability may constitute waiver of right to object).

But as noted in *First Options*, the simple failure to move for a stay, or the choice to stay silent, may be insufficient to determine arbitrability in the absence of a written agreement. An agreement to arbitrate must be clear and unequivocal, in writing or by conduct. An entity which claims to have never agreed to arbitration has not waived their right to contest arbitrability in a court, unless their agreement to arbitrate can be demonstrated, clearly and unequivocally under contract law principles.

In light of this rule, CRTV’s reliance on *First Options* is misplaced. The Kaplans did not object, but neither did they participate. Only their corporate entity defended. Simply put, unlike CRTV in relation to Oak Hill, the Kaplans neither participated, nor showed by their behavior, that they had agreed to arbitration. In this matter, CRTV has participated and defended against Oak Hill and having done so, the cases, both in federal and state courts, make clear that an agreement to arbitrate can be inferred from CRTV’s conduct.

As the Second Circuit has explained “although a Party is bound by an arbitral award only where it has agreed to arbitrate, an agreement may be implied from the Party’s conduct.” *Gvozdenovic v. United Airlines, Inc.*, 933 F.2d 1100 (2d Cir. 1991) (agreement to arbitrate and waiver of objections to arbitrability inferred where Party voluntarily and without objection participated in arbitration proceedings). Where, as here, CRTV “manifests a clear intent to arbitrate its dispute” with Oak Hill by, among other things, failing to pursue its jurisdiction defense and then mounting a substantive defense to Oak Hill’s claims, an agreement by CRTV to arbitrate the dispute should be implied. See, e.g., *Teamsters Local Union No. 764 v. J.H. Merritt and Co.*, 770 F.2d 40 (3d Cir.1985) *Piggly Wiggly Operators’ Warehouse, Inc. v. Piggly Wiggly Operators’ Warehouse Indep. Truck Drivers Union, Local No. 1*, 611 F.2d 580, 584 (5th Cir.1980)

“On whatever basis it rests, waiver, estoppel or new contract, the result is that the grievance submitted to the arbiter defines his authority without regard to whether the Parties had a prior legal obligation to submit the dispute.” *Id.* The case law is rife with examples of courts holding that behavior similar to CRTV’s shows a Party’s intent to

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arbitrate.

For example, where a Party participated in the hearing on the merits, offering testimony and witnesses, the Party was deemed to have waived its objections to arbitrability. *New York City Dist. Council of Carpenters Pension Fund v. Tadco Const. Corp.*, 2008 WL 540078 (SDNY Feb. 28, 2008); see also *Merrill Lynch & Co., Inc. v. Optibase, Ltd.*, No. 03-civ.4191, 2003 WL 21507322 (S.D.N.Y. June 30, 2003) (Party pursued discovery in the arbitral forum relating to merits of the claims and was thus unlikely to succeed on its argument that it did not agree to arbitrate those claims); *iPayment* 2016 WL 1544736, at *4 “failing to maintain an objection to the arbitrator’s jurisdiction” and “participating beyond disputing arbitrability, such as engaging in discovery, testifying, and submitting papers on the merits of the underlying dispute may evidence waiver”) (quoting *Opals on Ice*, 320 F.3d at 369).

CRTV’s conduct after filing its Answer displayed an intent to arbitrate the Oak Hill claim, under both New York and federal law. CRTV never raised jurisdiction after pleading it in its Answer. (See CRTV Answer, Sept. 9, 2017). After that pleading, CRTV failed to “raise an explicit objection,” see *Tadco*, 2008 WL 540078. It did not repeatedly reserve the right to contest” arbitrability, *Herman Miller, Inc. v. Worth Capital, Inc.*, 173 F.3d 844, 1999 WL 132183 at *1 (2d Cir. 1999). It did not file a motion nor seek relief for lack of jurisdiction. *Penrod Mgmt. Grp. V. Stewart’s Mobile Concepts, Ltd.*, 07-CV-10649, 2008 WL 463720, at *1, 3 (S.D.N.Y. Feb. 19, 2008).

Instead, CRTV “pursued discovery in the arbitral forum relating to the merits” of Oak Hill’s claims, *Optibase*, 2003 WL 21507322; and participated in the hearing “beyond disputing arbitrability” by “testifying and submitting papers on the merits” of Oak Hill’s claims. *iPayment*, supra.

CRTV failed to raise the issue in a Pre-Hearing brief intended to encompass “all significant disputed issues.” CRTV retained an expert “to evaluate the alleged economic damages ... incurred by Respondents” – defined as including Oak Hill Media, – “due to the allegations in their counterclaims.”

At the hearing, CRTV offered testimony specifically intended to argue the merits of Oak Hill’s claim. For example, CRTV elicited testimony from Mr. Wunderlich as to whether “some of [his] opinions regarding Mark Steyn Enterprises also apply to the damages claimed by Oak Hill Media.” Mr. Wunderlich went on to offer testimony about mitigation, present value, and the anticipated duration of the relationship between CRTV and Oak Hill.

In addition to *First Options*, CRTV relies on *China Minmetals Materials Import and Export Co., Ltd. v. Chi Mei Corp.*, 334 F.3d 274, 290 (3d Cir. 2003), which involved a foreign arbitration award enforcement proceeding. China Minmetals is not persuasive, as its holding relies on an allegedly forged document.

CRTV agreed by its conduct to submit Oak Hill’s claims to arbitration when it mounted a substantive defense to those claims. Under contract law, it is estopped from pursuing the arbitrability claim. There was a clear and unequivocal waiver of any claim of lack of arbitrability. By its conduct, CRTV has agreed to arbitration and submitted the dispute

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with Oak Hill to arbitration. The Arbitrator has jurisdiction over the dispute between Oak Hill and CRTV. Oak Hill Media, LLC, is a proper party to this arbitration.

Discussion

CRTV contends that while Steyn agreed, by contract, to host the Mark Steyn Show, he “aggrandized” his role and became the executive producer. In so doing, they claim that “he failed to assemble a staff, failed to create a budget, failed to set a schedule, failed to implement structure, failed to rehearse, and failed to treat the crew with respect; and, because of these failures, failed to create enough content for the show, thereby destroying it.”

CRTV asserts that it has proven that Steyn breached his contract with CRTV, by failing to provide the show enough of Steyn’s time and effort and by failing to provide the show enough content. Lastly, CRTV contends that “Steyn’s company” converted CRTV’s property.

There is no argument that the Binding Term Sheet formed a valid contract between CRTV and Steyn. In that contract, there is both a delineation of the duties of the Parties and an obligation of cooperation between them in certain areas. CRTV retained control over the business aspects of the show and Steyn retained creative control. The contract provides that CRTV shall retain production, office and security staff, and build a studio in Burlington, Vermont where the show was to be primarily shot. Steyn was to create enough content for 200 shows per year, with each show being 48 minutes long. Steyn’s obligation to deliver the content was to begin when the studio in Burlington was ‘fully functional.’ The Parties anticipated that would be around October 1, 2016.

The evidence shows that the Parties began the project in good faith. The contract was effective July 1, 2016. Steyn was on a previously planned research trip in Europe for the summer (of which CRTV was aware,) and took time while abroad to arrange interviews, choose music and create and record the openings and closings for the show. CRTV hired the producer Steyn had recommended: Rikki Ratliff, who was hired away from Fox Business where she was the producer for John Stoessel. She had run a daily TV show in the past.

Unfortunately, this working relationship failed. Steyn returned from Europe in September, 2016. The studio was under construction, but Steyn had scheduled shoots in London believing that a technical crew would have been hired by Ratliff upon his return and would be in place to edit the content filmed off site. But Ratliff had not hired a technical crew, despite having the authority to do so. In fact, there was no staff in place to edit content or assist and support further content production.

In September, frustrated by Ratliff’s inaction, Howes, on behalf of Steyn, asked CRTV to send her someone who “knows TV” to help get the show running. She also asked for assistance in hiring directors and production staff.

CRTV management agreed that Ratliff had done little to advance the show or construction of the set. Chris Crane wrote to Katz that Steyn and Howes “concerns

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regarding Rikki's ability, experience, judgment and leadership were validated." Ratliff was fired after setting up a disastrous interview with a completely unqualified job candidate.

While it is true that Ratliff encountered difficulties communicating with Steyn through Howes, Steyn, Howes and CRTV executives agreed Ratliff accomplished little, made poor decisions, which cost the show time, and cost CRTV money and failed to hire staff.

Despite its earlier agreement, CRTV now blames the Respondents for Ratliff's failure. Katz, no doubt embarrassed by her termination after wooing her away from another job, hired Ratliff for another CRTV position. It is clear though, at the time, CRTV executives supported Steyn's opinions, conclusions, and actions regarding Ratliff's performance.

It is interesting to note, that aside from Howes, there appears to have been little oversight of the production from July to September. Great amounts of money were being spent to build the set, yet it is unclear who from CRTV was supervising or checking on Ratliff as the summer wore on.

In any event, Ratliff's failure meant that the positions deemed critical by Steyn, Howes and Crane (on behalf of CRTV) needed to be quickly filled. Given the complexity of building a show from the ground up, the Parties had given themselves a tight timeline. In addition, the Mark Steyn Show was more complex to film, edit and produce than any of the other CRTV shows done at that time.

In the effort to fill the necessary positions, the relations between the Parties suffered greatly. The process began well enough, as Katz and Crane called on Jason Meath, a CRTV producer, to assist with the production of the show. Feeling that he did not have enough time, Meath called a production staffing company which began its work without ever informing Steyn or Howes.

The production staffing company hired a series of consultants to help put together a production team. The consultants spent little time on the ground in Burlington and this led to disdain for them by Steyn. Meanwhile, Katz, who without argument was generous with funds, became frustrated by what he believed was the difficult behavior of Steyn. Interestingly, though he admired Steyn, he relied on his executives for his information. It does not appear that Steyn and Katz ever talked directly about the difficulties that were occurring or their different perceptions of them. Perhaps this is underscored most by their different views of the executive producer position.

After Ratliff's firing, the Parties agreed to fill the technical positions most critically needed to process content. They had agreed that the executive producer would later be promoted from among the ranks of others hired.

Katz took this, because of certain statements made by Howes and Steyn, to mean that Steyn was the executive producer. Steyn and Howes believed that they were keeping that position open and simply doing what needed to be done while production staff, editors, cameraman and directors were hired. Since it was CRTV's responsibility to hire the production staff, and a phenomenal amount of money was being spent, it is difficult to understand Katz's and CRTV's failure to confront the crisis directly.

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The show limped along, as the studio was built, with intermittent communication between the Parties, as various people tried to pull together a production staff. While there is enough blame to be placed on all Parties, it is again odd that CRTV, in charge of both the construction and production did not take the bull by the horns. Katz seems to have been trying to please Steyn by doing things in the way he believed Steyn wanted them done. Unfortunately, he had no direct knowledge of what that might be. Suffice it to say, that by the time that the studio was finished and the crew largely in place, there was little love lost on both sides.

CRTV planned on launching the network on December 1, 2016. Unbeknownst to Steyn, in planning for the launch, CRTV was clearly soured on the Steyn show prospects and was considering speeding up other content. The lack of direct communication, in which misunderstandings festered, had taken its toll.

On October 20, 2016, Cary Katz wrote to his executive team of Chris Crane and Michael Boyd about another host named Crowder, "You need to speed up the development of this show we will need to get him up and running fast if Steyn screws us. I hate to even write that, but we have to be prepared for a worst case scenario."

Crane replies, "Fine, let's stay focused Crowder is always standing by. We will get through this."

Boyd writes "Why did he [Steyn] cancel the Christmas show?"

Crane replies "No one is cancelling anything. Let's announce everything and put this m.....f.....r on the hook for everything. If anything goes wrong, it lands on HIM, not CRTV. 'Time to get tough with Pussy Steyn and Momma Bitch Nutcase Melissa. How's that for calm?...Time to man up."

To which Boyd responds "Totally agree."

And most incredibly, Katz responds to this by saying only "We will be relentlessly positive and strong"

It should be mentioned, that while Katz admired Steyn, Steyn was neither well understood by Katz nor liked by the CRTV staff. It was clear from the evidence and from Steyn's demeanor at the hearing that his interests are wide ranging, his insights are original, and his opinions are erudite. But he does not suffer fools, and while clever, he can be abrupt, temperamental, sarcastic, cutting, hurtful and rude. His zealous guarding of his time and personal space was seen as condescending by most around him.

Much was made of Steyn's personality and Howes' as well. She too can be biting and insulting. But certainly, in the news and entertainment business, just like in the business, legal and political worlds, dealing with difficult talent cannot be unusual or shocking to executives. While Steyn may be 'difficult,' and his fascination with music or cats barely understood by those producing shows for a conservative political network, he was the talent Katz had pursued; his clever, original insights and his sharp tongue were much of what made him a great voice for liberty. The sizzle reel had encouraged Steyn. CRTV promised Steyn they would help him create a multifaceted show different than anything

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else they had produced.

No one at CRTV seemed to have comprehended the complexity of creating and producing the show they had agreed to originally produce. Katz repeatedly testified that his frame of reference for cost and complexity was the Mark Levin Show, which is completely different in format, content, and goals. It is a more traditional political talk show. The gulf between the expectations of Steyn, who appears, in his demeanor and standards to be a perfectionist, and the expectations of CRTV for cost, time and investment of effort, may have been too wide a gulf to span, resulting in the demise of the show.

CRTV contends that it extended itself to the last degree to provide Steyn with an excellent production team. It contends that, to the extent the show lacked a production team that could be ready for a timely launch of the show, it was solely because Steyn obstructed CRTV's effort to provide one. The actual events are more complicated.

For its part, CRTV spent an apparently unlimited amount of money to provide Steyn with a beautiful set. It hired one of the most prominent set designers in TV, Bryan Higgason for the job. He designed a set that Steyn approved. CRTV also hired a well-qualified and experienced architect to oversee the construction of the set. They built a beautiful set, which witnesses described as stunning, fabulous and state of the art.

It was also far behind schedule. Completion was anticipated to be October 1, 2016, but it was not completed until December, 2016. And while CRTV witnesses fault Steyn's absence over the summer for some of the delay, this position is not persuasive. CRTV was well aware, when it entered the contract that Steyn would not be present over the summer. But even if he had been, he was not bound by the contract to build or contribute to the building of the studio and set. Nor was he needed. CRTV was contractually bound to build the studio and hire the production crew. To the extent that Ratliff made decisions which were incorrect and impeded the project, it was CRTV's duty to oversee the construction, not Steyn's. Experienced personnel could have prevented what Steyn found upon his return; that the construction had left the set inadequate for its intended use. This would not have happened with adequate supervision of the construction by Ratliff or other CRTV personnel.

While the set construction was completed in December, 2016, and a production crew was assembled, the disagreement over who was to blame for the problems encountered is a small example of the larger dispute between the Parties. That is, who did not live up to their obligations under the contract? Did either Party breach the contract and, if so, how did that occur.

The answer to these questions it appears, as agreed upon by counsel during closing arguments, comes down to the question of whether or not the Burlington studio was 'fully functional' for the purpose of creating the 'highly produced' Mark Steyn Show.

Was the Burlington Studio fully functional?

As discussed above, after Ratliff's departure, Steyn, Howes and Crane met and, as Crane, on behalf of CRTV, reported to Katz, a consensus had been reached. A new executive producer would not be named until a person could be identified during the first

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few months of production.

What happened next was described earlier. Jason Meath failed to fill the agreed upon key roles and hired Ventana Productions to fill spots, without informing Steyn. On the bright side, Mike Young, an independent contractor, was brought in to help with the build out of the studio and to hire technical staff. Unfortunately, this too was delayed because Meath failed to return phone calls from Young.

The anticipated completion date for the studio, October 31, 2016, passed.

By mid-November, Young had started to hire technical staff, filling the 'key roles' identified in Crane's consensus memo. The studio, however, remained incomplete. On, November 29, 2016, Young warned Katz that the studio was not ready for filming, as flooring and lighting were not yet completed. He also praised Howes for bringing in a 'launch team' ... to help produce the first and subsequent shows, producers, writers, and editors.

Earlier in November, Steyn had written to CRTV about his increasing concern about technical problems at the studio that required lengthy and inconvenient "workarounds." He wrote "[on] a daily show, you don't have the time for workarounds," such as driving two hours away to conduct interviews and filming off-site. He wrote that this "means the studio has to work as intended." Steyn testified: "we did not have a fully functioning studio, but because of my moral contractual obligation to my fans, we continued taping as much as we could."

Steyn testified that production was impeded by camera control problems, the inability to use the monitor which was a central element of the program, a flicker in the monitor which affected where one could be filmed on the set, and audio distortions, to name only a few of the problems attested to.

It's true that some content was produced in the studio in early December, 2016, but the test of whether the studio was fully functional is whether or not the equipment and the studio worked as intended. The studio's intended use was for the production of the Mark Steyn Show, a daily, 48-minute-long, "highly produced" broadcast. For instance, the monitor's use was central to the show. The 80" monitor was a focal feature of the set and was to be used for interviews of guests and to show film, news or other types of clips related to commentary or discussion on the program.

Other inadequacies in the studio became apparent to almost everyone who worked there and everyone who came to investigate or help. The cameras, which may have been adequate for a more traditional talk show were inadequate for the filming of this show and put a burden on post production. Even worse, the editing suites did not work properly and crashed repeatedly during post production. CRTV witnesses testified that post production created a choke point for the show which prevented the timely production of adequate amounts of material for the show. Indeed, it was unclear that the equipment could handle the size of the files needed to produce this type of show. The situation was bad enough that more than one person pleaded with CRTV for the presence of a full-time engineer to troubleshoot the problems and crashes as they occurred.

That some content could be produced at the studio does not prove that the studio was fully functional to produce entire shows that could be filmed, produced and delivered five times a week. Indeed, parts of the Christmas special had to be filmed off site. Some editing had to be done by Steyn at his office in Woodsville, New Hampshire. Audio problems which plagued performances were fixed in London. From the testimony, one can infer that the studio had been built and equipped with equipment standard to other CRTV studios but inadequate for the show agreed to in the term sheet.

During oral argument, the Parties disagreed about when, if ever, the studio became fully functional. CRTV points to the first week of December, but the overwhelming evidence is that many technical shortcomings made the studio not fully functional at that time. In the alternative, CRTV argues that by time of the notice of breach, and/or during the cure period, the “glitches” complained of were either fixed or so insubstantial that the studio was, at that time, fully functional.

Also in December, Katz unilaterally imposed a \$25,000 per month budget on the Steyn show. While he called this a starting point for negotiation, it was a number substantially below what the show had cost per month to date. It was the same amount of money spent on CRTV’s Mark Levin Show, a show that was, without dispute, far different in production values than the Steyn show.

Steyn hired Kraig Kitchin, an industry veteran, to work on negotiations with CRTV and Katz, regarding both the technical problems and the new budget restrictions. On December 30, 2016, Kitchin wrote an extensively detailed memo to Mike Young, both complimenting the beauty of the Burlington facility and pointing out the technical problems that still needed to be addressed.

While CRTV argues that Kitchin’s memo was based on information told to him earlier in December, many of the problems he described appear in the emails sent by Joe Weasel, who had been hired to provide production assistance to the show in January, 2017, and appeared as a CRTV witness. Also in January, Carl Marxer, an employee of another Katz enterprise, Poker Central, again wrote of similar problems. While some problems had been improved upon, others remained. The studio did not have enough ISO recorders to cover the cameras in the studio; the program feed was not available from the studio for the editors to see during taping; two editors were not able to work on a project at the same time which was deemed necessary; an assistant editor station was needed; the camera robotic operator needed more than one CCU for the cameras, because this show, unlike the Mark Levin Show, had frequent lightings changes and the settings did not hold; the flicker previously noted by everyone in the set piece monitor had not been fixed despite various attempts; a flicker caused by LED lights had yet to be addressed by set electricians or technicians; the internet service to the studio was still inadequate; no cable TV set had been installed in Steyn’s office so that he could prep for the show. In addition, Marxer again noted that an engineer was needed during the shooting to solve production problems as they arose.

CRTV relies on the testimony of Mike Dunn, a director, Mike Young, the technical contractor, and Paul Kullman a show staffer, for proof that the technical “glitches” were normal bugs that could be worked out or had been fixed by the time of the notice of

breach and the cure period. Contrary to this position, Mike Dunn testified that that some of the problems continued into February. He testified that early in February, there were synching issues; as late as February 20, 2017, the studio monitor continued to flicker and that the issue was not resolved prior to termination; post production problems persisted when studio editors could not make line cuts because of problems in synching isolated recordings.

While Young testified that the “glitches got ironed out as the show is filmed”, he was not specific and he did not directly contradict Dunn’s testimony. Kullman, who testified that he fixed the flickering monitor by unplugging and replugging cables, was not credible. His testimony was not supported by anyone else and he had obviously lied during his testimony about his whereabouts during an absence from work, both to Howes, at the time of the absence, and during his sworn arbitration testimony.

In critical ways, the studio was not ever fully functional. Not only did the large set monitor continue to flicker, its uplink technology, if any, did not work. This monitor, which allowed a show based in Vermont to have guests join it from anywhere in the world was critical both to the show’s production and its budget. The edit room crashes continued. Musical performances, which had been anticipated in the term sheet, were hampered by the limited range of movement that could be shot, along with sound distortion and mixing issues.

Something is fully functional if it works as it is supposed to work for its intended use. The Burlington studio may have worked for others, but it did not work for the complex and highly produced broadcast that was supposed to be the Mark Steyn Show. Since a fully functioning studio was a condition precedent to Steyn’s obligation to produce content, CRTV, having failed to meet its contractual obligation, did not have the right to declare a breach for lack of sufficient production of content. In addition, it is clear from the evidence that the cure demanded by CRTV was something that could not be accomplished in the studio that existed.

Breach

Since a fully functioning studio was a contractual obligation that CRTV failed to meet, CRTV did not have the right to declare a breach for lack of sufficient production of content. CRTV’s breach of contract claim requires proof that CRTV fulfilled its material contractual obligations. Unless excused, the failure to complete a fully functional studio prevents recovery for breach of contract. *Dorfman v. American Student Assistance*, 104 A.D.3d 474, 474 (1st Dep’t 2013); *JP Morgan Chase v. J.H. Elec. of N.Y., Inc.*, 69 A.D.3d 802, 803 (2d Dep’t 2010).

It is also clear, that Steyn’s obligation to produce content commenced only when the studio was fully functional. In order to recover, CRTV would have had to prove that the studio was fully functional which, based on the above recitation of the facts found, it did not prove.

CRTV’s alternative claim of breach arises from Section 3.1 of the Term Sheet. That Section provides that Steyn “shall devote sufficient professional time, efforts and attention to (a) creating, performing, hosting, announcing, promoting, marketing, and

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being an on-air personality, as required by CRTV and customarily provided by a host of a radio/television show such as The Mark Steyn Show.”

CRTV has outlined and offered proof of the acts or omissions it contends constitute a breach of the contract. These include Steyn’s summer trip to Europe and a claimed failure to communicate adequately with Rikki Ratliff; a failure to rehearse; failure to attend meetings; failure to maintain a production schedule; tardiness; disrespect for the crew; interference and obstruction of the hiring process.

The first problem with this claim is that the contract itself sheds little light on what was expected of Steyn other than that which was customary. The executives at CRTV might have become disenchanted with Steyn, and talked about his shortcomings behind his back, but there is a complete lack of evidence of any action taken to directly confront Steyn or communicate to him a clear set of expectations.

Thus, CRTV must prove that Steyn deviated from devoting the time, effort and attention that is customarily provided by a host of a radio/television show like his and such deviation was the cause of the collapse of the show.

Both in setting forth the requirements of CRTV and what is customary, the term sheet is woefully lacking in detail, clear requirements and expectations.

“A custom, in order to become part of a contract, must be so far established and so far known to the Parties that it must be supposed that their contract was made in reference to it. For this purpose, the custom must be established, and not casual, uniform and not varying, general and not personal, and known to the Parties ... Usage is a matter of fact, not opinion.” *Gerseta Corp. v. Silk Ass’n of America*, 220 A.D. 293, 295 (1st Dep’t 1927).

This alternate claim of breach has not been proven.

Conversion

CRTV claims conversion by Steyn of four items: two computers, a mixer, and a keyboard, which are valued (as outlined in the CRTV’s brief) at \$8,950. Howes testified that these items were stored in production offices after February 8, 2017, in anticipation of producing scheduled content and to safeguard intellectual property stored on the computers. In order to prove conversion, CRTV must have shown that the Respondent “exercise[d] ... dominion over or interference with []property in defiance of the plaintiff’s rights” *Ahles v. Aztec Enterprises, Inc.*, 120 A.D.2d 903 (3d Dep’t 1986)

In order to prove that property has been kept in defiance of a person’s rights, a demand must be made for the return of the property, and the wrongdoer must have refused that demand or disposed of the property. CRTV did not prove that the retention of the property in question was done in defiance of its rights. CRTV presented no evidence that it demanded the return of these items and that the Steyn Parties refused to return them.

The claim for conversion has not been proven.

The Steyn and Oak Hill Media Counterclaims

Breach of Contract

As outlined above, CRTV has failed to prove by its claims by a fair preponderance of the evidence.

On the other hand, Steyn has proven that they performed their contract and were attempting production of the show, but were hampered by the studio which was not fully functional. As their content production requirement began only after the studio was fully functional, CRTV breached its obligations to Steyn and Oak Hill.

Steyn and Oak Hill have presented evidence of resulting damages.

Fraud

Fraud necessitates the misrepresentation (or omission) of a known fact. To establish fraud, a Plaintiff must prove a misrepresentation or material omission of fact which was false and known to be false by the Defendant, made for the purpose of inducing the other Party to rely upon it, justifiable reliance, and injury." *Nerey v. Greenpoint Mortg. Funding, Inc.*, 144 A.D.3d 646,647 (2d Dep't 2016).

Steyn contends that the behavior of CRTV, based on comments found in internal e-mails ("going for the breach" "slow walking the budget") and the criticisms and suggestions of Mark Levin, constitute fraud; that is, CRTV intended to end the show, but strung Steyn along, praising shorter content during the cure period and then proceeding with its termination for lack of sufficient content. Fraud must be proven by clear and convincing evidence.

In addition, where a claim of fraud arises out of an underlying breach of contractual duties, an action for fraud will not lie unless the misrepresentations at issue are "collateral or extraneous to the agreements entered into by the Parties." *Spellman v. Columbia Manicure Manufacturing Co.*, 111 A.D.2d 320, 323 (N.Y. App. Div. 1985).

Crane's question, "are we going for a breach" was more of an expression of opinion than fact. Katz said he wanted to "slow walk" the budget talks while he waited to see how Steyn's first episodes turned out. Mark Levin may have hated the Mark Steyn show, and Katz may have worried about subscriptions, but this too is not clear and convincing evidence of fraud. There is no evidence of actionable fraudulent conduct.

Alter Ego and Tort Claims

The Counterclaimants did not brief these claims. They are deemed abandoned.

Damages

Under New York law, "a Party injured by breach of contract is entitled to be placed in the position it would have occupied had the contract been fulfilled according to its terms." *Merrill Lynch & Co., Inc. v. Allegheny Energy, Inc.*, 500 F.3d 171, 185 (2d Cir. 2007). "In an action for breach of contract" Claimants are "entitled to the benefit of [their] bargain as written and [are] entitled to damages for the loss caused by failure to perform the stipulated bargain and the recovery may include the profits which he would have derived from performance of the contract." *Wechsler v. Hunt Health Sys., Ltd.*, 330 F. Supp. 2d 383, 424 (S.D.N.Y. 2004).

Under the Term Sheet, Steyn would have been paid \$4,000,000 over five years, payable in \$200,000 quarterly installments. At the time of CRTV's breach, Steyn had received \$600,000 from CRTV as payments under the Term Sheet.

Under the Letter Agreement, CRTV owed Oak Hill Media \$500,000 per year, payable in quarterly installments. CRTV also loaned Oak Hill approximately \$750,000 interest-free for the purchase of a home, which Oak Hill agreed to repay in quarterly installments of \$75,000. Because the quarterly loan payments set off the quarterly services payments earned under the Letter Memorandum, Oak Hill earned a net of \$50,000 in each of the first three quarters of the term of the agreement, paying off \$225,000 of the loan.

Oak Hill was also paying production staff through its own payroll system and then requesting reimbursement from CRTV. After the show was cancelled, CRTV refused to reimburse Howes for production-related expenses, including payroll.

Lori Hobart, who worked for Oak Hill, testified that CRTV failed to reimburse Oak Hill for certain expenses, all related to the production of content for the Show.

CRTV contends that Steyn has failed to mitigate his damages. They have incorrectly cited case law which does not apply in the current factual situation. If CRTV raises the issue of mitigation, then CRTV must prove the opportunity and failure to mitigate. They offered no such proof. Dr. Wunderlich's remark that Steyn should have been able to "find some kind" of work misunderstands the Parties' agreement. Steyn was free to continue his usual work. Hosting, as the named talent, his own show was what CRTV contracted with him to do. They would have had to show that he had the opportunity for another similar opportunity.

CRTV did not present any evidence that Steyn has failed to mitigate damages. Under New York law, it is not Steyn's duty in a contract case to prove that he has mitigated. The term sheet explicitly says that there is not an employment relationship, which under some causes of action would cause a plaintiff to prove mitigation. CRTV's argument is unavailing.

Similarly, except in certain statutorily mandated causes of action, a discount to present value need not be introduced by the Plaintiff. Indeed, the reduction can be made by the court, after a finding on liability and damages, if evidence has been presented upon which the court can base its calculations. Here, neither Party introduced any evidence at the hearing regarding what the appropriate discount rate would be for the reduction of damages to present value.

The discount rate, as used to reduce damages to present value in litigation, is normally based on the yield from a safe investment, such as the rate of return on US Treasury bills. Where, as in the present case, damages are not being awarded for losses far into the future and the US Treasury bills yield is approximately the same as the inflation rate, a present value calculation is essentially a wash, as both the inflation rate and the discount rate must be considered. Here, in the absence of any proof provided of the appropriate rate of discount or inflation, and an approximate one-year period over which the future damages are to accrue, a calculation based on "judicial notice" of both the inflation rate and the rate for 10-year Treasury notes at the time of the breach would

result in a present value calculation of essentially the future contract damages awarded.

CRTV, having not introduced any evidence of the appropriate discount rate, despite having called an expert who testified about the need for present value, should not be now permitted to argue for a more precise present value calculation. Having failed to introduce evidence that would have benefitted it in the analysis of damages, CRTV has effectively waived a claim for a more complex present value calculation. The present value is, under the circumstances of this case, the amount of the Award

New York Statutes do mandate the imposition of interest. Under New York law, the Steyn Parties are also entitled to prejudgment interest at a rate of 9% (CPLR §§ 5001(a)-(b); 5002, 5004 ("interest shall be recovered upon a sum awarded because of a breach ... of contract.). MSE and Oak Hill are due prejudgment interest on the damages incurred from the date of the breach to the date of this decision. In addition, they are due interest on the amount of damages which would have been payable from the date of this decision through June, 2019 (see discussion regarding present value calculation, supra

The Parties further disagree about whether or not damages can run past the June 30, 2019, date written into the contract. The Binding Term Sheet requires the Parties to work in good faith, and as of January, 2019, are required to determine how the show is doing and whether or not it can be improved. CRTV retains the right to not renew the contract as of July 1, 2019, if it is dissatisfied with the show.

In a breach of contract action brought under New York law, a Party generally may recover lost profits if: (1) its alleged lost profits were caused by the breach of contract; (2) the damages were fairly within the contemplation of the Parties when contracting and; (3) the damages can be proved with a reasonable certainty. *Washington v. Kellwood Co.*, 105 F. Supp. 3d 293, 312-13 (S.D.N.Y. 2015); *Int'l Telecom. v. Generadora Electrica del Oriente S.A.*, 2004 WL 784941, at *3 (S.D.N.Y. April 13, 2004)

New York law must be used as a reference for whether or not the damages flowing from July 1, 2019, forward are speculative in nature. The recovery for future damages must be based on reasonable certainty and not be based on speculation. The evidence presented by CRTV regarding the difficult relationship between the Parties is not conclusive of whether or not damages are appropriate for the period after June 30, 2019. There are though, relevant facts which can be gleaned from the evidence. First, the relationship between the Parties was a new venture, with no track record of previous success. Second, there are a variety of unknown business factors which could affect renewal. Third, the right not to renew is unilaterally held by CRTV, and the criteria for non-renewal are broad and undefined.

In this case, one can only speculate about what circumstances might arise between now and June 30, 2019, to determine if CRTV would fail to renew the contractual relationship of the Parties. An attempt to prove that CRTV would have acted in good faith in relation to renewal, as suggested by the Respondents, would be based on guesswork and conjecture. The damages will therefore be limited by the outside date of June 30, 2019.

Past contractual damages owed to Steyn total \$800,000.

Damages, based on contractual sums that would have been due Steyn in the future, are \$1,000,000.

For Oak Hill, past damages, which include payments due to Oak Hill, less its repayment for the loan advance and production costs incurred by Oak Hill, are \$508,124.

Damages, due to Oak Hill, which would have accrued after the date of this award, are \$400,000. While CRTV asserted, for the first time, in its Response to the Interim Award that Oak Hill should receive no post-termination damages (because its letter agreement is an at will arrangement which terminates if the Steyn contract terminates for "any reason"), this argument is unpersuasive under New York law. In addition, its calculation of damages, contained in a footnote, is unclear and therefore unpersuasive. It does not appear to be based on the submitted contractual payment schedule as modified by loan repayments.

The letter agreement refers to the Term Sheet. The evidence revealed that an agreement with Oak Hill was a condition for any agreement with Steyn. Both agreements were executed on the same day for the same term and purpose; the production of the Mark Steyn Show. Under New York law, all writings forming part of a single transaction are to be read together. See *TVT Records v. Island Def Jam Music Group*, 412 F.2d 82 (2d Cir. 2005); *This is Me, Inc. v. Taylor*, 157 F.3d 139, 143 (2d Cir.1998); *Gordon v. Vincent Youmans, Inc.*, 358 F.2d 261, 263 (2d Cir.1965) ("[I]t is both good sense and good law that these closely integrated and nearly contemporaneous documents be construed together.") (quoting *Kurz v. United States*, 254 F.2d 811, 812 (2d Cir.1958) (per curiam)); see also *F.H. Krear & Co. v. Nineteen Named Trustees*, 810 F.2d 1250, 1258 (2d Cir.1987) (citing *Gordon* for the proposition that under New York law all writings forming a single transaction must be read together); *Nau v. Vulcan Rail & Constr. Co.*, 286 N.Y. 188, 197, 36 N.E.2d 106, 110 (1941) (finding that agreements at issue "were executed at substantially the same time, related to the same subject-matter, were contemporaneous writings and must be read together as one.").

If the law is followed, and the writings are read as one to give effect to the Parties' intent, it is logical and reasonable, that Oak Hill's agreement tracked that of Steyn. To have one agreement be for a term and the other at will is an interpretation which in no way acknowledges the purpose or intent of the writings. "A contract should not be interpreted to produce an absurd result, one that is commercially unreasonable, or one that is contrary to the intent of the Parties." *Cole v Macklowe*, 99 A.D.3d 595, 596 (1st Dept 2012). "[T]he aim is a practical interpretation of the expressions of the Parties to the end that there be a realization of [their] reasonable expectations" *Brown Bros. Elec. Contrs. v Beam Constr. Corp.*, 41 N.Y.2d 397, 400 (1977).

Attorneys' Fees

In their Counterclaims, Steyn and Oak Hill requested attorneys' fees and costs. In its answer to their Counterclaim, CRTV similarly requested attorneys' fees and costs.

Rule-47(d) of the Commercial Rules of the American Arbitration Association states:

(d) The award of the arbitrator(s) may include:

i. interest at such rate and from such date as the arbitrator(s) may deem appropriate; and ii. an award of attorneys' fees if all Parties have requested such an award or it is authorized by law or their arbitration agreement.

In their agreement, the Parties agreed to submit to arbitration any unresolved dispute or claim arising out of, or relating to, the Term Sheet "in accordance with the rules of the...AAA." When Parties agree to submit to arbitration and where their agreement is silent on the issue of attorney's' fees, the issue is deemed submitted to the arbitrator. *Paine Webber v. Bybyk*, 81 F3d 1193, 1202 (2d Cr.1966).

When Parties agree that disputes will be governed by a particular set of rules, those rules are deemed incorporated into the Parties' agreements. *B/E Aerospace, Inc. v Jet Aviation St. Louis, Inc.* 2012 WL1577497 (S.D.N.Y. May3, 2012); *Dunhill Franchisees Trust v. Dunhill Staffing Sys. Inc.* 513 F. Supp.2d 23 2007); *Warner Bros. Records v. PPX Enterprises* 776 N.Y.S. 2d 269 (2004).

In this matter, the Parties requested attorney's fees. CRTV's contention that its request was "pro forma" and therefore should be disregarded is not persuasive. CRTV claimed attorney's fees in its answers to the First and Second Amended Counterclaims as well as on the AAA cover sheet. These three requests were prayers for relief (i.e. requests for an award of fees to be made in their favor).

This matter, which was litigated for about one a year, was highly contested. It involved substantial, extensive electronic discovery (CRTV produced over 150,000 pages), witnesses in various parts of the country and a two-week arbitration proceeding at a location where none of the lawyers conducting the arbitration resided. Each side had multiple counsel assigned to the case and multiple counsel in attendance at the hearing. The presentations were thorough, even though the time frame was compressed.

CRTV, MSE and Oak Hill all claim to be prevailing Parties. CRTV initiated this arbitration with a claim that Steyn breached his contract with CRTV and he was both corporately and personally liable for damages. CRTV lost this claim. Indeed, MSE and Oak Hill prevailed on their counterclaim that CRTV was responsible for a breach of the contract. Essentially, this was the central dispute of the arbitration.

The Respondent's countered CRTV's breach of contract claim and included claims for fraud and tort as well as attempting to pierce the corporate veil. The proof and effort put into these additional claims was largely the same as its breach of contract claim and its defense to CRTV's claim.

When cases involve "related claims," as they do here, and a Plaintiff achieves significant overall relief, "the fee should not be reduced simply because the plaintiff failed to prevail

on every contention raised...the result is what matters.... A Court's rejection... of certain grounds is not a sufficient reason for reducing a fee." *Hensley v Eckerhart*, 461 U.S. 424.435 (1983.) New York law is consistent with this proposition. See *55 Walker Street Condominiums v. Walker Street, LLC* 6 A.D. 3d (1st Dep't. 2004); *Senfield v. I.S.T. A. Holding Company CO. Inc.*, 235 A.D> 345 (1st Dep't1997.)

CRTV and Katz argue that Katz is a prevailing Party and therefor entitled to attorney's fees because claims made against Katz failed. But the holding of *Wiederhorn v. Merkin*, 98 A.D. 3d 859 (1st Dep't. 2012) counters this position as it applies to Katz. Having mounted a joint defense with CRTV, Katz cannot be considered separately for purposes of a fee award.

As for CRTV's position of being a prevailing Party, it ignores that pleading is allowed in the alternative. While MSE, Oak Hill, and Steyn abandoned or did not prove some their claims, Steyn prevailed on the central claim of this dispute: Was there a breach of the Parties' contract, and if so who was responsible for that breach? CRTV lost the central claim. The failure of MSE and Oak Hill to prevail on some "related claims" does not make CRTV a prevailing Party when MSE and Oak Hill achieved "significant overall relief."

In addition, the attorney's fee affidavit submitted by CRTV lacks sufficient detail upon which an award can reasonably be made. While the affidavit listed the hours billed, and resumes and rates for attorneys involved, CRTV offers no detail regarding which documents on what work the hours were accumulated. *Klein v. Robert's American Gourmet Food Inc.*, 28 A.D.3d 63, 75 (2d Dep't. 2006)

Attorney's fees and non-overhead costs are awarded to Steyn, MSE and Oak Hill as prevailing Parties. These fees and costs are awarded collectively to them as theirs was a collective defense and the proof of their claims was identical except for the calculation of damages. The fees are reduced because some hours billed were excessive. It is logical, too, that the attorneys' fees of MSE and Oak Hill would be higher than those of the Claimant, as CRTV was in control of much of the evidence upon which the Respondents' case relied.

The Respondent's attorney's fees are reduced by one third. Their costs are reduced by \$30,403 which represents certain costs which are more appropriately classified as overhead. Costs are further reduced by the amount of \$77,575 which was claimed by the Respondent Counterclaimants as costs paid to the AAA. AAA costs will be dealt with separately.

Attorneys' fees of \$908,104 and costs of \$104,625 are awarded to Steyn, MSE and Oak Hill.

CRTV shall be responsible for all AAA arbitration administrative fees and costs and all fees of the Arbitrator, including those of Steyn, MSE and Oak Hill.

FINAL AWARD

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On the Claim filed by CRTV, an Award is made in favor of the Respondents. The Respondents have volunteered to return the property that was the subject of CRTV's conversion claim. The Parties shall make arrangements for the return of the property.

On the Counterclaims asserted by Steyn, MSE and Oak Hill:

1. An Award in favor of Steyn and MSE is made in the amount of \$1,800,000, together with interest in the amount of 9% from the date of the breach to the date of the Award on past damages and from the date of the Award until payment is made on future damages.
2. An Award in favor of Oak Hill is made in the amount of \$908,124, together with interest in the amount of 9% from the date of the breach to the date of the Award on past damages and from the date of the Award until payment is made on future damages.
3. Attorney's fees and costs are collectively awarded to Steyn, MSE and Oak Hill in the amount of \$1,012,729.
4. The Administrative fees and expenses of the AAA totaling \$31,600.00 are to be borne \$31,600.00 by CRTV, LLC . The Compensation and expenses of Arbitrators totaling \$123,749.98 are to be borne \$123,749.98 by CRTV, LLC . Therefore, CRTV, LLC has to pay Mark Steyn and Mark Steyn Enterprises (US), Inc., an amount of \$76,574.98.

/s/ Judge Elaine Gordon, (ret.)

Arbitrator

February 21, 2018