

ORIGINAL
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Superior Court Of California
County Of Los Angeles

JAN 13 2014

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

16 PROSPECT PARK NETWORKS, LLC, a
17 Delaware limited liability company,

18 Plaintiff,

19 vs.

20 AMERICAN BROADCASTING COMPANIES,
21 INC., a Delaware corporation; and DOES 1
22 through 10, inclusive,

23 Defendants.

Case No. BC 506052
Assigned to Hon. Robert L. Hess, Dept. 24

DEFENDANT AMERICAN
BROADCASTING COMPANIES, INC.'S
NOTICE OF MOTION AND MOTION TO
STRIKE ALLEGATIONS IN FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

Date: February 10, 2014
Time: 8:30 a.m.
Dept: 24

RECEIPT #: CCH517486011
DATE PAID: 01/14/14 09:16 AM
PAYMENT: \$60.00 310
RECEIVED:
CHECK: \$60.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00
CIT/CASE: BC506052
LEA/DEF#:

Fees paid on 1/13/14 \$435.00
X/VA
N/A

01 / 14 / 2014

1 NOTICE OF MOTION

2 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on February 10, 2014, at 8:30 a.m., or as soon thereafter as
4 the matter may be heard, before the Honorable Robert L. Hess in Department 24 of the above-
5 entitled Court, located at 111 North Hill Street, Los Angeles, CA 90012, Defendant American
6 Broadcasting Companies, Inc. ("ABC") will, and hereby does, move this Court for an Order striking
7 the following allegations in the First Amended Complaint ("FAC") filed by Plaintiff Prospect Park
8 Networks, LLC:

9 In paragraph 101 of the FAC the following allegations: "Prospect Park further maintains
10 that it is entitled to an extension of the License Agreement, and that the term of the License
11 Agreement can and should be tolled, from the time of ABC's breach until the breach is fully
12 remedied. An extension of the License Agreement is necessary and warranted so that Prospect Park
13 may enjoy the full term of its license without encumbrance and/or interference from ABC."

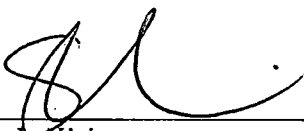
14 In the Prayer, paragraph 5, the following allegations: "that Prospect Park is entitled to an
15 extension of the License Agreement; and that the term of the License Agreement is tolled, from the
16 time of ABC's breach until the breach is fully remedied."

17 This Motion to Strike is made pursuant to California Code of Civil Procedure sections
18 431.10, 435, 436 which permit a court to strike "irrelevant, false, or improper matter inserted in any
19 pleading." Cal. Civ. Proc. Code § 436(a). These allegations should be stricken because they are not
20 a proper basis for declaratory relief.

21 This Motion to Strike is based on this Notice, the accompanying Memorandum of Points and
22 Authorities, all matters of which the Court may take judicial notice, all pleadings, records, and files
23 in this action, and upon all other matters the Court may consider at the scheduled hearing on this
24 Motion to Strike or otherwise.

25 Dated: January 13, 2014

VALLE MAKOFF LLP

26
27 By: 
28 Susan L. Klein
Attorneys for Defendant
American Broadcasting Companies, Inc.

01/14/2014

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This case involves a License Agreement between Defendant ABC and Plaintiff Prospect
4 Park Networks, LLC ("Prospect Park") for the rights to the popular daytime soap operas *One Life to*
5 *Live* ("OLTL") and *All My Children* ("AMC"). Among other things, Prospect Park in its First
6 Amended Complaint ("FAC") seeks a declaration from the Court that the express term of the
7 License Agreement is extended and tolled based on ABC's alleged breach. But it is well settled that
8 the purpose of declaratory relief is to *interpret* the terms of a contract -- not to rewrite as Prospect
9 Park seeks to do here. The Court should strike Prospect Park's request for a declaration that the
10 term of the License Agreement is tolled and extended from the FAC accordingly.

11 **I. SUMMARY OF THE FAC'S RELEVANT ALLEGATIONS.**

12 **A. ABC Cancels "One Life to Live" and "All My Children" and Licenses Rights**
13 **To Prospect Park**

14 In April 2011, ABC announced its decision to cancel two of its iconic long-running daytime
15 soap operas *One Life to Live* and *All My Children* citing dramatically lower ratings, high production
16 costs and viewers' changing tastes. FAC ¶ 3.

17 In July 2011, ABC and Prospect Park entered into a License Agreement whereby ABC
18 granted Prospect the right to option the exclusive rights to OLTL and AMC. Prospect Park's
19 expressed intent was to launch a new web-based network called The Online Network and to produce
20 OLTL and AMC for the internet. FAC ¶¶ 4-5, Exhibit A.

21 Under the License Agreement, ABC granted Prospect Park an exclusive 12-month Option
22 Period in which to exercise its rights and begin production of OLTL and AMC episodes. The Term
23 of the Agreement began when Prospect Park exercised its Option and began production. The Term
24 of the Agreement is defined as follows:

25 TERM: On the condition that Licensee has exercised Licensee's option ... and Licensee has
26 begun production of a New Series, as applicable, then Licensee shall have the exclusive right
27 to produce up to fifteen (15) seasons of each of the New Series....

28 FAC, Exhibit A ¶3.

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1 The License Agreement provides that if Prospect Park ceases to produce new episodes for 18
2 consecutive months, then the rights granted under the License Agreement (but not the rights to the
3 episodes Prospect Park already produced) shall revert back to ABC. FAC, Exhibit A ¶ 7(b). If
4 Prospect Park produces episodes for the full Term of the Agreement, all rights revert back to ABC
5 at the end of the Term. FAC, Exhibit A ¶ 7(c).

6 **B. Prospect Park Is Unable To Produce the Shows and Enters Into Amendments**
7 **To The License Agreement**

8 Prospect Park encountered major obstacles to producing the shows after it entered into the
9 License Agreement. These problems included financing shortages, labor disputes, and high
10 production costs. Because Prospect Park was not producing the shows and, therefore, not using the
11 OLTL characters, the parties entered into an amendment to the License Agreement in January 2012
12 (“the First Amendment”). In the First Amendment, ABC agreed to align the dates for Prospect Park
13 to exercise its options for OLTL and AMC, thus giving Prospect an additional four months on the
14 AMC option, and to forgive some of the debt that Prospect owed it at that point. FAC, Exhibit B.
15 In return, Prospect Park agreed to license back to ABC the right to use some of the OLTL characters
16 on ABC’s remaining soap opera *General Hospital* (“GH”), which benefited Prospect by keeping the
17 OLTL characters in the minds of the viewing public on GH, and by providing employment for the
18 actors playing these roles, while Prospect Park tried to solve its problems and begin production of
19 OLTL and AMC. FAC ¶ 19.

20 Prospect Park did not complain while ABC used the OLTL characters throughout 2012. To
21 the contrary, Prospect Park exercised its Option for both OLTL and AMC in December 2012, and
22 the parties subsequently entered into two additional amendments to the License Agreement, which
23 each extended Prospect Park’s time to begin production of the shows and gave ABC continuing use
24 of the OLTL characters on GH. FAC ¶¶ 41, 42-45, 59, Exhibits C and D.

25 Still struggling financially, in April 2013, Prospect Park filed this lawsuit claiming ABC
26 breached the License Agreement by not consulting on storylines involving the borrowed OLTL
27 characters and by misusing the characters in “absurd” storylines and by “killing” some of them off.
28 In November 2013 (after bringing in new counsel), Prospect Park filed the FAC, asserting for the

1 first time that it was fraudulently induced into entering into the First Amendment to the License
2 Agreement.

3 Prospect Park now seeks \$95 million in compensatory and punitive damages and asks, *inter*
4 *alia*, that the Court declare that Prospect Park is “entitled to an extension of the License Agreement,
5 and that the term of the License Agreement is tolled, from the time of ABC’s breach until the breach
6 is fully remedied.” FAC ¶ 101, Prayer ¶ 5. There is no legal basis for Prospect Park to ask the
7 Court to change the terms of the License Agreement and extend its express unambiguous Term.

8 **II. THE COURT SHOULD STRIKE PROSPECT PARK’S REQUEST FOR AN**
9 **EXTENSION OF THE LICENSE AGREEMENT**

10 **A. The Court Can Strike Irrelevant Improper Matter In The FAC**

11 California Code of Civil Procedure section 436 (a) authorizes this Court to strike any
12 “irrelevant, false, or improper matter inserted in any pleading,” including a “demand for judgment
13 requesting relief not supported by the allegations of the complaint.” Cal. Civ. Proc. Code § 431.10
14 (b) (2) (3) and (c). A substantive defect which appears on the face of a complaint, but involves only
15 a portion of a cause of action, may be the subject of a motion to strike. *PH II, Inc. v. Superior*
16 *Court*, 33 Cal. App. 4th 1680, 1682-83 (1995). Prospect Park’s request for a declaration that the
17 Term of the License Agreement is extended and tolled is such a defect.

18 **B. Prospect Park’s Request For An Extension of The License Agreement Is**
19 **Improper And Should Be Stricken**

20 A party seeking declaratory relief must demonstrate that its request is a proper subject of
21 declaratory relief. *Jolley v. Chase Home Finance, LLC*, 213 Cal.App.4th 872, 909 (2013). And it is
22 well settled that “[t]he very purpose of an action for declaratory relief is to set at rest the *unsettled*
23 *questions* which have arisen in the attempts of the contracting parties to *interpret* their written
24 agreement.” *Ralphs Grocery Co. v. Amalgamated Meat Cutters & Butcher Workmen of N. Am.,*
25 *Local No. 439*, 98 Cal. App. 2d 539, 542 (1950) (emphasis added) (interpretation of contract to
26 determine wage categories of employees under union contract is proper subject for declaratory
27 relief). Thus, declaratory relief operates “to declare future rights, rather than to redress past
28 wrongs.” *Jollèy v. Chase Home Finance, LLC*, 213 Cal. App. 4th at 909.

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1 Here, Prospect Park is *not* asking this Court to resolve an unsettled question by interpreting
2 the Agreement. Instead, it is doing the exact opposite: asking this Court to rewrite the contract to
3 unsettle something that parties have already firmly determined -- the term of the License. Simply
4 put, Prospect Park's request is not a proper subject of declaratory relief.

5 As the Court stated in *Culbertson v. Cizek*, 225 Cal. App. 2d 451, 463 (1964), in reversing a
6 judgment for declaratory relief: a court of equity "cannot ... make a contract for the parties, nor
7 vary the terms of one made, nor substitute another one therefor, nor can it remedy a wrong by
8 making in effect a contract between the parties with reference to the subject matter." *Id.* (citations
9 omitted). See also *Lyon v. Goss*, 19 Cal.2d 659, 673-674 (1942) (in declaratory relief action "[i]t
10 was not proper... for the court to incorporate new obligations in the contract... by giving defendant a
11 specified time in which to perform"); 26 Cal. Jur. 3d § 47 (a declaratory judgment "must not operate
12 to change the agreement made by the parties or to incorporate new obligations"); *Rivera v. Aurora*,
13 2010 WL 1709376 at *4 (S.D. Cal. April 26, 2010) (refusing to declare an extension of a
14 forbearance agreement beyond its express term).

15 The License Agreement already expressly sets forth the negotiated and agreed upon term of
16 the contract. It states that the Term runs from the date Prospect Park began production for up to 15
17 seasons of 12 calendar months each (unless Prospect ceases production for 18 consecutive months,
18 in which case the rights revert back to ABC). FAC, Ex. A ¶¶ 3-4, 7. Prospect Park might not like
19 that, but it cannot ask this Court to declare that it is not so.

20 **CONCLUSION**

21 For the foregoing reasons, Defendant ABC respectfully requests that the Court strike the
22 irrelevant and improper allegations requesting an extension and tolling of the License Agreement in
23 paragraph 101 and in the Prayer of the FAC.

24
25 January 13, 2014

26 **VALLE MAKOFF LLP**

27 By: _____

28 Susan L. Klein
Attorneys for Defendant
American Broadcasting Companies, Inc.

01 / 14 / 2014

PROOF OF SERVICE

BC506052

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11911 San Vicente Boulevard, Suite 324, Los Angeles, CA 90049.

On January 13, 2014, I served the following document(s) described as follows:

- 1) DEFENDANT AMERICAN BROADCASTING COMPANIES, INC.'S MOTION TO STRIKE ALLEGATIONS IN FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
- 2) [PROPOSED] ORDER GRANTING AMERICAN BROADCASTING COMPANIES, INC.'S MOTION TO STRIKE ALLEGATIONS IN FIRST AMENDED COMPLAINT

on the interested parties in this action by placing a true copy thereon enclosed in a sealed envelope addressed as follows:

Michael E. Weinsten
LAVELY & SINGER
PROFESSIONAL CORPORATION
2049 Century Park East, Suite 2400
Los Angeles, CA 90067-2906
Via Personal Service

James Edward Maloney, Esq.
Via E-Mail

(BY PERSONAL SERVICE) I caused to be delivered such envelope by hand to the offices of the addressee pursuant to CCP § 1011. (STATE/FEDERAL)

(BY E-MAIL) jamesmaloney@andrewskurth.com

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 13, 2014, at Los Angeles, California.


EMMA NAVARRO

01/14/2014