

of New York found both subject matter jurisdiction under the ATCA and personal jurisdiction over Talisman as a foreign corporation doing business in New York.¹¹⁶ Reaffirming United States and international treaty precedent, the Court determined that Talisman could be treated as a state actor under the ATCA.¹¹⁷ The Court expanded subject matter jurisdiction under the ATCA by finding that Talisman's cooperation with the Sudanese government and Talisman's role as a co-conspirator in the genocidal acts committed by the Sudanese government against the southern Sudanese populations around oil concessions amounted to acts under color of state law for purposes of liability under the ATCA.¹¹⁸

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V. RECOGNITION OF FOREIGN JUDGMENTS

Films By Jove, Inc. v. Berov

A. Introduction

In *Films By Jove, Inc. v. Berov*, the United States District Court for the Eastern District of New York recognized the sovereignty and independence of the United States judiciary in the international arena.¹¹⁹ In its decision, the Court acknowledged the pervasive corruption in the Russian legal system and revealed an interest in protecting United States business interests.¹²⁰ In disregarding the decision of the High Arbitrazh Court of the Russian Federation, Russia's court of last resort, the Court discounted international principles of comity.¹²¹ In doing so, the Court conveyed intolerance for corruption.¹²² Future opinions will therefore rely on this decision in order to promote United States interests in the international realm and to justify non-recognition of foreign judgments.

116. *Presbyterian Church*, 244 F. Supp.2d at 319, 331.

117. *See id.* at 308-17, 328-29.

118. *Id.* at 328.

119. *Films By Jove, Inc. v. Berov*, 250 F. Supp.2d 156, 158 (E.D.N.Y. 2003)[hereinafter *Films By Jove*].

120. *Id.*

121. *Id.*

122. *Id.*

B. Background and Summary of Arguments

In an August 2001 ruling, the Court awarded summary judgment in favor of an American film company, Films By Jove [hereinafter FBJ], effectively validating FBJ's title to over 1,500 Russian animated films created by a state-owned enterprise prior to 1991.¹²³ On appeal, Joseph Berov, an American vendor of the films in question and a defendant in this action, conceded to violations of copyright law; however, Berov maintained that FBJ was not the proper plaintiff in the action against him.¹²⁴ Specifically, Berov alleged that the Court should reconsider its previous grant of summary judgment because of a recent decision by the High Arbitrazh Court in Russia [hereinafter Arbitrazh], which credited ownership of the copyrights to a third party plaintiff, the Federal State Unitarian Enterprise Soyuzmultfilm Studio [hereinafter FSUESMS].¹²⁵

In the instant decision, the Court agreed with FBJ and reaffirmed FBJ's position as the valid titleholder of the copyrights in dispute.¹²⁶ During the trial, the parties offered fundamentally different versions and interpretations of the events leading up to the lawsuit.¹²⁷ Although the case involved copyright infringement, the determination of the proper owner of the copyrights at issue controlled the outcome of the case.¹²⁸

FBJ argued that it held a valid title to the copyrights. FBJ alleged that, in 1989, the Russian state enterprise that had been controlling the studio since 1936 was transformed into a lease entity, conferring a new legal status upon it and transferring the ownership of the copyrights.¹²⁹ These events occurred during the period of Perestroika, where the Russian government encouraged privatization and liberalization of the economy.¹³⁰ When the state enterprise was transformed into a lease entity, FBJ maintained the state enterprise ceased to exist.¹³¹ Accordingly, the copyrights in the films passed to the lease entity, called Soyuzmultfilm Studio, by operation of law.¹³² In 1989, Soyuzmultfilm Studio agreed to pay rent to the Russian state in exchange for a ten-year lease on the tangible property owned by the

123. *Films By Jove*, 250 F. Supp.2d at 158.

124. *Id.* at 216–17.

125. *Id.* at 178, 164.

126. *Id.* at 217.

127. *Id.* at 161.

128. *Films By Jove*, 250 F. Supp.2d at 160.

129. *Id.* at 161.

130. *Id.*

131. *Id.*

132. *Id.*

state.¹³³ In 1992, Soyuzmultfilm Studio awarded FBJ an exclusive license to refurbish and sell the copyrighted films.¹³⁴ In 1999, just before the ten-year lease expired, Soyuzmultfilm Studio was reorganized into a private company, also called Soyuzmultfilm Studio [hereinafter SMS].¹³⁵ Upon termination of the lease, the state property that had been leased to Soyuzmultfilm Studio was returned to the state, and SMS, the privatized company, moved to another location but retained the copyrights that had passed to it as a result of the reorganization.¹³⁶ During that same year, Russia established a new state enterprise: FSUESMS.¹³⁷

Berov, on the other hand, argued that FSUESMS was the successor to the original state enterprise and the lawful holder of the copyrights.¹³⁸ He argued that the copyrights to the films were owned by the state and never legally passed to Soyuzmultfilm Studio; rather, the copyrights “were merely under the ‘operative management’ of the studio.”¹³⁹ Accordingly, the Soyuzmultfilm Studio could not have conveyed the copyrights to FBJ because it never had the authority to do so.¹⁴⁰ Berov also denied FBJ’s allegation that the state enterprise ceased to exist, arguing instead that the state enterprise experienced a phase of “suspended animation” during the ten-year lease and was subsequently revived as FSUESMS in 1999.¹⁴¹ Therefore, Soyuzmultfilm Studio could not have legally sold the copyrights to FBJ; instead, the rights passed from the original state enterprise to FSUESMS.¹⁴²

C. Discussion

The Court reaffirmed its previous grant of summary judgment, focusing on the flawed logic of the Arbitrazh’s decision and the allegations of corrupt influence by Russian government upon the Russian judiciary.

133. *Films By Jove*, 250 F. Supp.2d at 161.

134. *Id.* at 160, 162.

135. *Id.* at 162.

136. *Id.* at 162.

137. *Id.*

138. *Films By Jove*, 250 F. Supp.2d at 164.

139. *Id.* at 163.

140. *Id.*

141. *Id.*

142. *Id.* at 163–64.

Logic of the Russian Court's Decision

The Court decided that the Russian decision was relevant to the outcome of Berov's motion for reconsideration because that outcome would be dependent upon an issue addressed by the Russian court: the legal succession of the ownership of the copyrights.¹⁴³ Although the Court ultimately rejected the logic of the Arbitrazh's decision, the locus of the litigation in Arbitrazh pivoted on questions of legal ownership necessary for the resolution of this case.¹⁴⁴

At the hearing, Berov and FBJ each interpreted the significance of the Arbitrazh's decision differently.¹⁴⁵ Berov argued that the Arbitrazh's conclusion that the state enterprise continued to exist throughout the ten-year lease period negated FBJ's ownership in the copyrights.¹⁴⁶ Because the state enterprise retained the copyrights when the lease agreement was executed in 1989, the copyrights never passed by operation of law to FBJ.¹⁴⁷ Berov further argued that according to the Arbitrazh, FSUESMS, as the legal successor to the state enterprise, owned the disputed rights.¹⁴⁸ FBJ responded by claiming that the transfer to FSUESMS applied only to the tangible property mentioned in the lease agreement.¹⁴⁹ FBJ argued that the state enterprise could not have existed because it lost all the qualities of a commercial entity.¹⁵⁰ The state enterprise during the 1990s had no equipment or office space and did not function as an independent commercial enterprise.¹⁵¹ Therefore, FBJ asserted, the state enterprise did not exist during the lease agreement and the copyrights could not have legally passed to FSUESMS.¹⁵²

In support of his argument, Berov pointed to an information letter issued by the Arbitrazh that rejected the possibility of automatic legal succession to SMS by stating that "legal succession is determined by the content of the property, rights and obligations transferred by the statement."¹⁵³ This argument would be "devastating" to FBJ had the

143. *Films By Jove*, 250 F. Supp.2d at 179.

144. *Id.* at 158, 179, 216.

145. *Id.*

146. *Id.* at 179–80.

147. *Id.* at 179.

148. *Films By Jove*, 250 F. Supp.2d at 179.

149. *Id.* at 162.

150. *Id.* at 198.

151. *Id.* at 180–81.

152. *Id.* at 161.

153. *Films By Jove*, 250 F. Supp.2d at 182–83.

court not distinguished the situation involved in the information letter from the one currently in dispute.¹⁵⁴ The reorganization in the information letter concerned a studio that was “spun off” from an existing state enterprise.¹⁵⁵ There, the original entity simultaneously existed alongside the new enterprise.¹⁵⁶ In the current action, the commercial activity of the state enterprise ceased with the signing of the lease agreement.¹⁵⁷

The Court found the Arbitrazh’s decision inconsistent in several ways. The lack of activity on the part of the state enterprise suggests that the state enterprise did, in fact, cease to exist.¹⁵⁸ Moreover, the Court found FBJ’s expert, Dr. Sergei Pashin, convincing.¹⁵⁹ Dr. Pashin claimed that the Arbitrazh decision misrepresented the law and ultimately came to a decision that was “unprecedented and illogical.”¹⁶⁰ Dr. Pashin further declared that the Arbitrazh decision was an attempt through collusion to protect state interests, stating that the decision “allowed the organs of the executive branch to interpret this decision in any manner they deemed fit, which would be for the purpose of protecting what is specifically understood to be ‘state interest.’”¹⁶¹ At the time the lease agreement was executed, the Russian government had created the Fundamental Principles on Leasing [hereinafter Principles] to encourage privatization of state industries.¹⁶² According to Dr. Pashin, the ruling of the Arbitrazh conflicted with the purpose of the Principles.¹⁶³

The Court also found the Arbitrazh decision to be inconsistent because the record established that the copyrights were never state-owned property.¹⁶⁴ Under Article 486 of the 1964 Soviet Civil Code, which provides that ownership of copyrights rests with the entity that created the films, the Soyuzmultfilm Studio clearly owned the copyrights.¹⁶⁵ Therefore, the Soyuzmultfilm Studio legally owned the

154. *Films By Jove*, 250 F. Supp.2d at 183.

155. *Id.*

156. *Id.*

157. *Id.* at 184.

158. *Id.* at 197.

159. *Films By Jove*, 250 F. Supp.2d at 210.

160. *Id.* at 198.

161. *Id.* at 199.

162. *Id.*

163. *Id.* at 193, 197, 204.

164. *Films By Jove*, 250 F. Supp.2d at 201.

165. *Id.*

copyrights while the state retained the right to exploit the distribution.¹⁶⁶ However, during Perestroika, the right to distribute the films combined with the right to hold the copyrights.¹⁶⁷ Since the Soviet state did not own the copyrights in the first place, the rights could not have been involved in the 1989 lease agreement because the copyrights remained with the studio that produced the films rather than the state.¹⁶⁸

According to the Court, the fatal flaw in the Arbitrazh's decision arose from the implication that the copyrights remained with the state after the state-owned entity ceased to exist.¹⁶⁹ If the Court adopted the Arbitrazh's reasoning, there would have been no entity authorized to grant the copyrights during the lease-agreement period.¹⁷⁰ If the state enterprise was in "suspended animation," and the lease enterprise did not have the rights to the copyrights, then at no point during the ten-year lease would there have been an entity legally authorized to distribute the copyrights.¹⁷¹

Judicial Misconduct

Central to FBJ's argument is the allegation of insidious corruption in the Russian judiciary system.¹⁷² Specifically, FBJ accused the state of exerting "improper governmental influence" over the Russian courts.¹⁷³ The decision was depicted as an attempt to protect Russian state interests to the detriment of the American company.¹⁷⁴ FBJ's expert, Dr. Pashin, gave a convincing description of the state of the Russian judiciary, revealing that the composition of the Arbitrazh consists mostly of former state employees specifically hired to protect state interests.¹⁷⁵ Additionally, the Arbitrazh courts lack adequate funding and are dependent upon the state for resources.¹⁷⁶ This facilitates a relationship in which the judiciary is unduly influenced by pro-state concerns.¹⁷⁷

The courts of the United States, interested in protecting citizens

166. *Id.*

167. *Films By Jove*, 250 F. Supp.2d at 201.

168. *Id.* at 202.

169. *Id.*

170. *Id.* at 204.

171. *Id.* at 181, 204.

172. *Films By Jove*, 250 F. Supp.2d at 205.

173. *Id.*

174. *Id.* at 205-06.

175. *Id.* at 206.

176. *Id.*

177. *Films By Jove*, 250 F. Supp.2d at 206.

and companies of the United States, can reject foreign judgments when evidence exists that the judgment was influenced by corrupt forces.¹⁷⁸ Section 482 of the Restatement (Third) of Foreign Relations Law supports this conclusion by stipulating that if a foreign court fails to be fair or impartial, the United States court is not bound to follow it.¹⁷⁹ Here, FBJ produced evidence of impropriety on the part of the Russian courts. Several documents detailed a meeting between the deputy chairman of the Russian Federation and a representative from the Arbitrazh where the litigation between SMS and FSUESMS, as well as the need to protect state interests, were addressed.¹⁸⁰ The documents demonstrated improper influence and justified the United States court's decision not to defer to the Russian judgment.

F. Holding of the Court

The Court denied Berov's motion for reconsideration, basing its determination on the flawed logic of the court and viable allegations of judicial misconduct.¹⁸¹

G. Conclusion

In declining to defer to the Arbitrazh's decision and acknowledging the political corruption of the Arbitrazh, the Court highlighted the paramount importance of United States business interests and the judiciary's protectionist role in international law. In addition, by refusing to defer to the Russian decision, the Court made a political point and demonstrated its intolerance for judicial corruption.

P. Carey Kulp

VI. NATIONAL STOLEN PROPERTY ACT

United States of America v. Schultz

A. Introduction

In *United States of America v. Schultz*, the United States Court of Appeals for the Second Circuit examined whether conspiring to take

178. *Films By Jove*, 250 F. Supp.2d at 207.

179. *Id.* (citing RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 482 cmt. b (1987)).

180. *Id.* at 208.

181. *Id.* at 216.