

13-3865

16 Casa Duse, LLC v. Alex Merkin & Maurice A. Reichman

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT

3 August Term, 2014

4 (Argued: September 3, 2014 Decided: June 29, 2015)

5 Docket No. 13-3865

6  
7 \_\_\_\_\_  
8 16 Casa Duse, LLC,  
9 Plaintiff-Counter-Defendant-Appellee,

9 v.

10 Alex Merkin,  
11 Defendant-Counter-Claimant-Appellant,  
12 Maurice A. Reichman, Esq.,  
13 Appellant,  
14 A. Merkin Entertainment, LLC,  
15 Defendant.\*  
16 \_\_\_\_\_

17 Before: KATZMANN, *Chief Judge*, SACK and LYNCH, *Circuit Judges*.

18 The defendant appeals from a September 27, 2013, judgment of the United  
19 States District Court for the Southern District of New York (Richard J. Sullivan,  
20 *Judge*) granting summary judgment to the plaintiff on its copyright and state-law  
21 claims related to a film entitled *Heads Up*, dismissing the defendant's  
22 counterclaims, and awarding the plaintiff costs and attorney's fees. Because we  
23 agree that the plaintiff owns the relevant copyright interests, we conclude that  
24 the district court properly granted summary judgment to the plaintiff on its

\* The Clerk of Court is respectfully directed to amend the official caption in this case to conform

1 copyright claims and properly enjoined the defendant from interfering with the  
2 plaintiff's use of the work in question. We conclude, though, that the defendant,  
3 not the plaintiff, was entitled to summary judgment on the plaintiff's claim for  
4 tortious interference with business relations under New York law. The judgment  
5 of the district court is therefore:

6 AFFIRMED in part, REVERSED in part, and REMANDED.

7 ELEANOR M. LACKMAN (Joshua S.  
8 Wolkoff, *on the brief*), Cowan, DeBaets,  
9 Abrahams & Sheppard LLP, New York, NY  
10 *for Plaintiff-Counter-Defendant-Appellee.*

11  
12 MAURICE A. REICHMAN, New York, NY,  
13 *for Defendant-Counter-Claimant-Appellant &*  
14 *Appellant.*

15 SACK, *Circuit Judge:*

16 This is an appeal from a judgment of the United States District Court for  
17 the Southern District of New York (Richard J. Sullivan, *Judge*) granting summary  
18 judgment to the plaintiff on its copyright and state-law claims, dismissing the  
19 defendant's copyright counterclaims, and awarding the plaintiff costs and  
20 attorney's fees. Because we agree with the district court that the plaintiff owns  
21 the copyright to all versions of the work in question, a film entitled *Heads Up*,  
22 and that copyright does not subsist in individual contributions to that film, we

1 conclude that the district court properly granted summary judgment to the  
2 plaintiff on its copyright claims and did not abuse its discretion in enjoining the  
3 defendant from interfering with the plaintiff's use of the film. We also conclude,  
4 however, that the defendant, not the plaintiff, was entitled to summary judgment  
5 on the plaintiff's claim for tortious interference with business relations under  
6 New York law. We therefore affirm in part, reverse in part, and remand the case  
7 to the district court with instructions for it to grant the defendant's motion for  
8 summary judgment on the tortious interference claim and for such further  
9 proceedings as are warranted.

## 10 BACKGROUND

11 Appellee 16 Casa Duse, LLC, ("Casa Duse") is a film-production company  
12 based in Brooklyn, New York. The company is owned and operated by Robert  
13 Krakovski. Appellant Alex Merkin is a film director, producer, and editor.  
14 Appellant Maurice Reichman is an attorney who represented Merkin in some of  
15 his dealings with Casa Duse.

16 In September 2010, Krakovski, acting at all relevant times as the principal  
17 of Casa Duse, purchased the rights to a screenplay entitled *Heads Up* from the  
18 work's author, Ben Carlin. Krakovski, who planned to finance and produce a

1 short film based on the screenplay, asked Merkin whether he would be willing to  
2 direct the film. Merkin agreed, and the two settled informally on a fee of \$1,500  
3 for Merkin's services.

4 In the ensuing months, Krakovski assembled a cast and crew for the film,  
5 also entitled *Heads Up*. He hired additional producers, a script supervisor, a  
6 photography director, camera operators, various designers and technicians, and  
7 actors, creating an ensemble of about thirty members. Although Merkin  
8 recommended that Krakovski employ some persons as crew members,  
9 Krakovski made the ultimate hiring decisions. In the meantime, Krakovski,  
10 Merkin, and others involved with the project planned various aspects of the  
11 production, including props, locations, and scheduling.

12 Each cast and crew member other than Merkin entered into an  
13 "Independent Contractor [ ] Agreement" with Casa Duse. The agreements  
14 contained statements that Casa Duse would "engage the services [of the cast or  
15 crew member] as 'work for hire' of an independent contractor," J.A. 485, and set  
16 out terms for compensation, performance standards, and other matters. The  
17 work-for-hire agreements also stated that Casa Duse would retain "complete  
18 control" of the film's production and "own all of the results and proceeds of [the

1 cast and crew's] services in connection with the [film] . . . including, but not  
2 limited to, all rights throughout the world of . . . copyright . . . ." J.A. 487.

3 In February 2011, Krakovski sent Merkin a draft work-for-hire agreement  
4 entitled "Director Employment Agreement." Its terms were similar to those in  
5 the agreements signed by other cast and crew. It provided, *inter alia*, that Casa  
6 Duse would own all rights in the film. Merkin acknowledged his receipt of the  
7 draft by e-mail, noting that he would ask his lawyer to review it.

8 Some two-and-a-half months later, on May 9, 2011, Krakovski sent Merkin  
9 an e-mail reminding him to execute the agreement. Merkin did not respond.

10 Krakovski contacted Merkin again on May 16, a week before production  
11 was scheduled to start, reminding him again of the importance of completing the  
12 agreement before work on the film began. Merkin again failed to reply. On May  
13 18, Krakovski e-mailed again asking for a completed agreement, to no avail.

14 Despite the lack of a completed agreement, production began later that  
15 month. During production, which included three days of filming, Merkin  
16 performed his role as director by advising and instructing the film's cast and  
17 crew on matters ranging from camera angles and lighting to wardrobe and

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.