

Kelley Drye Wins Idea Submission Case Brought Against ABC Based On "Lost" Television Series

November 23, 2011

On November 16, 2011, the Honorable Judge Kevin C. Brazile dismissed Anthony Spinner's lawsuit against American Broadcasting Companies, Inc. (ABC), granting the motion for summary judgment filed by the Los Angeles office of Kelley Drye & Warren LLP.

Mr. Spinner is a television writer, who alleged that his 30-year-old script was used to create the television series, "Lost," which ABC broadcast from 2004 to 2010 (Mr. Spinner has written for TV shows including "The Man from U.N.C.L.E." and "Beretta").

Mr. Spinner alleged that he submitted a script to ABC executives in 1977, and orally pitched the script, as well as a separate treatment, to different sets of ABC executives in 1991 and 1994. Based on those alleged submissions, Mr. Spinner claimed that he entered into an implied-in-fact contract with ABC requiring ABC to pay him if the company used his idea. He then filed a lawsuit in the Superior Court of the State of California, County of Los Angeles, Central District, claiming ABC used his 1977 script to create "Lost," and thus breached the implied-in-fact contract by failing to pay him.

Judge Brazile found that the undisputed evidence established ABC did not have *access* to Mr. Spinner's script because none of the producers or writers involved in the creation of "Lost" had ever met, spoke with, or heard of Mr. Spinner or his 1977 script. During oral argument, Mr. Fink pointed out that "Lost" creators J.J. Abrams and Damon Lindelof were just youngsters, ages 10 and 4, respectively, at the time Mr. Spinner submitted his script.

In addition to the lack of direct evidence of access, Judge Brazile also found that Mr. Spinner could not establish the requisite nexus between the persons at ABC who received the script in 1977 and the creators of "Lost." Without such a nexus, or intermediary, Mr. Spinner's allegations of access amounted to sheer speculation, or bare corporate receipt of his script, which was insufficient to meet the legal standard - that defendant had a "reasonable opportunity" to view the plaintiff's work.

Judge Brazile also ruled that ABC negated Mr. Spinner's idea submission claim by showing that the script for "Lost" was independently created. After examining the detailed declarations submitted by all of the individuals responsible for creating "Lost," Judge Brazile concluded that the idea for "Lost" and its development, writing, and production, was independently created.

Having determined that no triable issue of material fact existed with respect to either the element of access or the affirmative defense of independent creation, Judge Brazile granted ABC's motion for summary judgment, dismissing the complaint in its entirety.