



Chanti Nieves, Respondent, v Home Box Office, Inc., et al., Appellants.

8697, Index 100966/05

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

30 A.D.3d 1143; 817 N.Y.S.2d 227; 2006 N.Y. App. Div. LEXIS 7298; 2006 NY Slip Op 4367

June 6, 2006, Decided

June 6, 2006, Entered

PRIOR HISTORY: [***1]

Nieves v. Home Box Off., Inc., 11 Misc 3d 1058A, 815 NYS2d 495, 2006 N.Y. Misc. LEXIS 365 (2006)

HEADNOTES

Civil Rights--Commercial Use of Photograph.--Motion to dismiss complaint seeking recovery of damages pursuant to Civil Rights Law § 51 for unauthorized use of plaintiff's image in television show produced and aired by defendants was denied; plaintiff's image was used during show, accompanied by crude remarks regarding plaintiff's sexual allure, and defendants failed to demonstrate that use of image bore "real relationship" to subject matter of show, and that plaintiff was not singled out and unduly featured merely because she was on scene.

COUNSEL: Davis Wright Tremaine LLP, New York (Laura R. Handman of counsel), for appellants.

Arshack & Hajek PLLC, New York (Daniel N. Arshack of counsel), for respondent.

JUDGES: Concur--Andrias, J.P., Friedman, Sullivan, Nardelli, Malone, JJ.

OPINION

[*1143] [*227] Order, Supreme Court, New York County (Debra A. James, J.), entered January 20,

2006, which denied defendants' motion to dismiss the complaint pursuant to CPLR 3211 (a) (7), unanimously affirmed, with costs.

Plaintiff seeks to recover damages pursuant to Civil Rights Law § 51 for the unauthorized use of her image in a television show produced and aired by defendants about a family of bounty hunters. It is undisputed that plaintiff's image was used during the show and that its use was accompanied by remarks by the show's cast in which the subject of plaintiff's sexual allure was crudely debated. Inasmuch as defendants failed to demonstrate that the use of plaintiff's image in this manner bore a "real [***2] relationship" to the subject matter of the show, and that plaintiff was not "singled out and unduly featured merely because [she was] on the scene" (*Gautier v Pro-Football, Inc.*, 304 NY 354, 359, 107 NE2d 485 [1952]; see *Blumenthal v Picture Classics, Inc.*, 235 App Div 570, [**228] 257 NYS 800 [1932], *affd* 261 NY 504, 185 NE 713 [1933]), the motion to dismiss the complaint was properly denied (*cf. Finger v Omni Pubs. Intl., Ltd.*, 77 NY2d 138, 141, 566 NE2d 141, 564 NYS2d 1014 [1990]; *Murray v New York Mag. Co.*, 27 NY2d 406, 409, 267 NE2d 256, 318 NYS2d 474 [1971]).

We have considered defendants' remaining arguments and find them unavailing. Concur--Andrias, J.P., Friedman, Sullivan, Nardelli and Malone, JJ. [*See* 11 Misc 3d 1058(A), 2006 NY Slip Op 50275(U) (2006).]