

Two brothers are claiming that Warner Bros stole their screen play to develop and produce “*The Last Samurai*”. The basis of the Benay brothers’ claim is that Warner Bros breached an implied contract to pay if they used the script.

Of course the brothers filed their lawsuit in California, so California law will determine the outcome of the case. But let’s imagine what would happen if Pennsylvania law determined the outcome.

In this case, the brothers pitched and presented the script to Warner Bros’ screenwriters around 1996. Presumably the screenwriters read the script around the same time. Warner Bros began producing the movie a short time later. Presumably, the parties did not discuss price, because a month after the presentation, Warner Bros declined to accept their script.

In Pennsylvania, to determine whether a contract exists, the law will objectively examine the parties actions. It doesn’t matter whether Warner Bros truly believed a contract did not exist if outward actions reasonably suggested to the brothers that a contract existed. One material fact that is missing from the brothers’ claim is price. How much did Warner Bros’ offer for the script? No agreement which could be inferred from the conduct of the parties in this case regarding a material element of the arrangement, specifically the fee agreement. This is the conclusion a court reached to resolve a breach of implied contract dispute between an employee search firm and an employer. The search firm claimed that the employer owed it a commission for hiring one its candidate. The court disagreed and found that no contract existed between the search firm and the employer because the parties’ did not agree on price. The case is *Ameripro Search, Inc. v. Fleming Steel Co*, 787 A.2d 988 (Pa. Super. Ct., 2001).

If we apply this ruling to the Benay brothers’ claim, then the brothers will likely lose. What can you learn from this case? If you have intellectual property that you want to protect while discussing it with a potential buyer, then execute a written contract. Be clear about what you expect from the other side in exchange for viewing your idea or property. Discuss what the buyers expect to receive in exchange for viewing your ideas. Discuss confidentiality issues prior to sharing your property. The contract does not need to be long. It is enforceable as long as it accurately reflects your agreement. Perhaps if the Benay brothers had discussed their expectations prior to presenting their script, then this lawsuit would be unnecessary.

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