

Supreme Court, Appellate Division, First Department, New York.
Chanti NIEVES, Plaintiff-Respondent,

v.

HOME BOX OFFICE, INC., et al., Defendants-Appellants.

June 6, 2006.

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.

ANDRIAS, J.P., FRIEDMAN, SULLIVAN, NARDELLI, MALONE, JJ.

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 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 N.Y. 354, 359 [1952]; see *Blumenthal v. Picture Classics, Inc.*, 235 App.Div. 570 [1932], *affd* 261 N.Y. 504 [1933]), the motion to dismiss the complaint was properly denied (*cf. Finger v. Omni Publs. Intl., Ltd.*, 77 N.Y.2d 138, 141 [1990]; *Murray v. New York Mag. Co.*, 27 N.Y.2d 406, 409 [1971]).

We have considered defendants' remaining arguments and find them unavailing.