

Before the Film and Publication Appeal Tribunal

In the matter between:

Nu Metro

and

The Film and Publication Board

1/2013

Award

Film: Spud2 – The Madness Continues

Professor Karthy Govender

Background and description of the film

This film is a sequel to *Spud*, which was released in 2010, and is based on the second in the series of five novels written by John van der Ruit. John Milton ('Spud') returns for his second year at a prestigious private school in the Natal Midlands, with a slight improvement to his physical status: he is no longer the smallest and most vulnerable in the school. His scholarship allows him to escape his somewhat dysfunctional family for the more salubrious surrounds of the private school. He leaves behind a father doing a thriving trade in moonshine (with the help of an increasingly emboldened housekeeper who is taking more than her share of the spoils); a mother who is obsessive about emigrating to avoid impending black majority rule; and an eccentric grandmother. He again links up with the gang called the 'Crazy Eight', and engages in a series of misadventures as they try to outwit housemaster Mr Wilson ('Sparerib') and the prefects, who are equally malicious in their ineffectual endeavours to control and ultimately to get rid of the Crazy Eight. Spud continues with his clumsy efforts at romance, which are both endearing and empathetic. Debbie ('Mermaid') features again in his life, and so does the seductive Amanda. His ambition for theatre stardom is ill-served by his less than memorable appearance as the Dove of Peace in the

house play 'Noah's Ark'. Mr Edley ('The Guv'), the English literature teacher, again serves as a counterweight to the obsessively rules-based approach of the principal Mr Glockenspiel ('The Glock') and the house-master. The film ends with Spud getting the award for English, remaining in the school and not finishing off like his father. However, he and the other members of the gang of eight are not at the assembly to receive the award, but rather are in the headmaster's office, attempting to make their mark and achieve legendary status. Thus the book is about the challenges of adolescence, about dealing with hostility based on social status, challenging the status quo, and engaging in asinine and anti-social behaviour in order, quite ironically, to remain at the school. This is an important South African production. We were informed that the series of *Spud* books have sold approximately 400,000 copies, making it something of a literary phenomenon in South Africa, and that it is to be prescribed in grades 7 to 9 in private schools in South Africa. In addition, the first *Spud* film has received considerable acclaim.

Submissions of the parties

On the 7th of June 2013, the film was viewed and arguments were heard on behalf of the appellants and from the classifiers. The Appeal Tribunal is obliged to Mr Mark Rosin of Rosin, Wright and Rosengarten for the applicants, and to Mr J Groenewald who represented the FPB, for their thoughtful submissions. We handed down our ruling in which we indicated that the classification of the film should be '10-12PG(VDS)'. These are the reasons for our unanimous conclusion.

A three-person classification committee viewed the film on the 14th of May, and after discussion unanimously assigned the film a restrictive age classification of '13(LVD)'. There was a comprehensive motivation for the conclusion in the Chief Examiner's Final Report. In summary, the main concerns of the classifiers were the following:

- The themes were complex and mature in nature, and dealt with issues such as camaraderie, growing up, challenging authority, bullying, and feelings of love and lust. These themes were of a moderate impact and could threaten the sense of security of young viewers.
- Mild to moderate language with sexual references was used.
- The protagonists regularly drink alcohol and smoke cigarettes, and there appears to be some alcohol bingeing.

- There were some imitable pranks, such as boys being beaten with a cricket bat , the use of fire extinguishers, and a boy being pushed down the stairs in a steel trunk. It concerned the classifiers that this could be perceived as acceptable fun and thus be imitated.
- There are some suggestive sexual gestures.
- The film does not have a pro-social outcome: innocent parties get the short end of the stick, and bad behaviour appears to be celebrated.

In his oral submission, Mr Groenewald argued that the classification committee had expressly considered whether the less restrictive classification of 10-12 PG was appropriate, and had concluded that a classification of 13 was legally appropriate, given the merits of this film. They were particularly concerned about 10-year-olds viewing this film as, in their view, this would be inappropriate. Thus the issue was whether a ten-year-old should be allowed to view this film. He argued that Spud succumbs to peer pressure and engages in anti-social behaviour in direct violation of the rules of the school. Mr Groenewald submitted that the film portrayed values that were not of a positive nature. Educators are discredited and humiliated, and the anti-social behaviour appears to be absorbed by the next generation of learners at the school. The classifiers were particularly concerned with repeated anti-social behaviour by the protagonists. Swigging alcohol from bottles in a manner that appears to glorify binge drinking, smoking, use of violence, bullying of younger boys, and undermining authority on a systematic and regular basis were examples of this pattern of anti-social behaviour that appears to be condoned and celebrated. The conclusion was that children under 13 would be cognitively immature, and might be impressed by this pattern of anti-social behaviour and thus might seek to imitate it. While the language and expressions used in the film were not of major concern, attention was drawn to the use of the word 'shagging' a few times.

The erotic dream sequence at the beginning of the film and the other sexual references were also considered. After considering these factors, the classifiers decided not to allow children under the age of 13 to view this film; hence their conclusion.

In response, Mr Mark Rosin submitted that the concerns of the classifiers could be adequately dealt with under a 10-12 PG classification with appropriate advisories. He submitted that the classification committee erred in its assessment by not classifying this film within context, and by not having regard to the tonal similarity between this film and its predecessor. He described the film as a comic coming-of-age film, and disputed that this was an anti-social film. Mr Rosin

submitted that the violence was always contextualised, and that there were no scenes portraying blood-letting. He contended that the scene with the boy falling down the stairs in a trunk was integral to films of the genre that portrays the goings-on in a boys' boarding school.

The appellant argued that the *Spudbooks* have rekindled an interest in reading, and are being prescribed for 12-year-olds in some schools. He stressed the strong comic elements in the film, and argued that the classifiers did not give adequate weight to the nature and brand of the film. He sought to reduce the impact of the drinking scene by arguing that these are what boys tend to do in boarding school, and submitted that as we watch them, we hope that they do not get caught. He concluded that a reasonable 10-year-old would be able to understand that this was a comic film about life in a boarding school. To the extent that some of the scenes could cause concern, the presence of parents would serve to assuage and explain some of the complexity. He was of the view that there was no reasonable explanation why the less restrictive classification of 10-12PG was not appropriate in these circumstances.

Analysis of the arguments, and the application of relevant legal principles

The current (2012) classification guidelines¹ have been operative for a few months, and this is the second occasion on which we have interpreted and applied them. In order to prevent any confusion, it needs to be noted that there are some legal misdescriptions in the guidelines. For example, section 12 (age classification 7-9 PG), section 13 (age classification 10), section 14 (age classification 10-12PG), section 15 (age classification 13), section 16 (age classification 16), and section 17 (age classification 18) refer to 'unrestricted' distribution. A similar description is applied to the corresponding provisions for games and publications. An age classification of 13, for instance, cannot be legally described as 'unrestricted', as persons under the age of 13 cannot view the film. Therefore describing this and the other classifications as 'unrestricted' is legally inaccurate, and should be avoided.

Further, the wording of each of these sections may lead to some confusion. So, for instance, section 15 states:

Material classified as '13' is not suitable for access by children under the age of 13.

¹. *Government Gazette* No. 35765 of 8 October 2012.

Clearly, the legal effect of classifying a film as '13' is that children under the age of 13 are *prohibited* from viewing the film. Once a classification is made, a restrictive age classification is attached to the film, and the classification is binding – it is not an advisory (which is the import of a phrase like “not suitable for access”) that guides distributors, broadcasters, and exhibitors. There are other provisions, such as language, nudity, etc., that allow for advisories. Thus it was clearly not the intent of the drafters of the guidelines that these classifications be deemed permissive or discretionary. The classifications have legal consequences and are restrictive. Any other interpretation would be inconsistent with the Films and Publications Act. These comments also apply to the corresponding provisions regarding games and publications.

I turn now to an assessment of the film in the light of the FPB Act and the 2012 guidelines. It was common cause that only one of two classifications would be appropriate in respect of this film. It was agreed that either a restrictive age classification of 13 or a restrictive age classification of 10-12 PG should be assigned to the film, and we accordingly limit our analysis to these classifications.

In our award in respect of the film *The Hobbit* (the 2D version) we stated:

There are some difficulties with the practice that appears to have been followed by the FPB. Section 3 of the 2012 guidelines², which deals with guiding principles, provides that:

- (1) All classification decisions must consider the context, impact and release format of material.
- (2) The context in which the classifiable element is present determines the acceptability thereof within the relevant category. When considering context, the following factors may be taken into account:
 - (a) The expectation of the public in general and the target market of the material.
 - (b) The theme of the material;
 - (c) The manner in which the issue is presented;
 - (d) The literary, artistic, dramatic or educational merit of the film;
 - (e) The apparent intention of the filmmaker, as reflected in its effect.

In terms of the guiding principles, the impact of the classifiable elements is used to determine the appropriate classification. It is apparent that in terms of the 2012 guidelines, regard must be had to a triad of assessments: context, impact, and the release format of the material. It is the cumulative assessment of all three categories that will result in a fair and appropriate outcome.

The various scenes that caused concern must be considered within the context of the film as a whole. This is a comedic film based on a series of novels dealing with adolescence in a private boarding school in South Africa, steeped in tradition and sometimes in idiosyncratic practices. The

²Government Gazette No. 35765, 8 October 2012.

comedic element is pervasive. The headmaster and housemaster are presented as caricature figures who are regularly outwitted by the Crazy 8. The housemaster in particular has a vindictive streak, and is willing to act in defiance of accepted moral standards in his endeavour to take control and get the Crazy 8 out of the school. He appears to enjoy using corporal punishment, violates Spud's privacy by reading his diary, uses the prefects to further his grand design, and pathetically seeks to ingratiate himself with the headmaster. When he is outmaneuvered by the Crazy 8, the viewers are not particularly sympathetic. Similarly, the eye-solution-swiggling member of the gang who becomes a star try scorer in rugby is funny. The characters who make up Spud's dysfunctional family add to the comedy, as does the housekeeper who is coming into her own with the dawning of the democratic South Africa. Similarly, the antics of the Crazy 8 are clearly over the top, as shown in the two hot dog eating competitions. In addition to the comedy, this film is set in 1991 and is narrated by Spud. For most 10-year-olds, these events would have occurred about twelve years before they were born. Further, the film is part of a franchise dealing primarily with the oddities of private schools. Thus the various scenes have to be assessed within the context of a comedy that deals with events that occurred some twenty-two years ago, and is part of a well-known brand dealing with the goings-on in a boys' boarding school.

One of the major concerns of the classifiers was the cumulative effect of the anti-social behaviour and the impact this could have on youngsters, and whether some of the pranks are likely to be imitated and thus contribute to the lack of discipline in schools. Their concern was particularly about the bullying, the violence meted out to some of the younger boys, the drinking and smoking in the gang's tree house ('Mad House'), and the undermining of the authority of the headmaster and the housemaster. The concern was specifically about whether 10-year-olds would seek to imitate this pattern of behaviour.

Much of the juvenile behaviour depicted is exactly what one would expect from a film about life in a boarding school. The issue is whether the cumulative effect of the anti-social behaviour justifies assigning this film a restrictive age classification of 13. After careful reflection, we concluded that it would be simplistic to describe this as an anti-social film that is about undermining authority. There are a number of positive social messages in the film that could be explained by parents to younger children. Spud is clearly not an inveterate lout, and has a number of redeeming characteristics. He does not throw a brick through the house window when he is trying to attract Debbie's attention; he remains true to his feelings for Debbie despite the best seductive efforts of Amanda; he tries, despite the appalling pressure put on him, not to betray his friends after his

diary is found and read. The antics of the Crazy 8 do not go unpunished. Two boys are expelled and some, including Spud, are suspended from school. One of the expelled boys returns after the intervention of the courts, but the other boy does not return. Spud, during his suspension, has an inkling of the school that he would have to attend if he were expelled from the private school. The alternative to the prestigious private school holds much less career promise. Much of what Crazy 8 do is in response to the efforts of the prefects and Sparerib to get them out of the school. For that reason the viewer does not feel deeply aggrieved when the prefects and Sparerib get their comeuppance. One cannot discount the importance of learners challenging antiquated rules that have no real value. The scene in which the headmaster storms onto the rugby pitch to order the Guv and the boys to stop reading poetry there, as it is reserved for the first rugby team, highlights the sort of rule that should be challenged and changed. Accordingly, our conclusion is that this film, viewed in context, portrays boys behaving in a way that undermines authority, but is not an anti-social film without redeeming messages. It also has a number of positive and affirming themes and messages, and the clear intention of the filmmaker is to amuse and to convey a series of messages about boys struggling with adolescence in a peculiar environment. The themes themselves, viewed in the context discussed above, are unlikely to be harmful to children.

I now turn to an analysis of some of the scenes that caused us concern, especially as they relate to a 10-year-old.

The opening sequence caused the Appeal Tribunal more concern than it appeared to cause the classifiers. The sex dream scene with Debbie and Amanda, which degenerates into Spud being whipped for failing to be decisive in choosing between the various girls, nudged us in the direction of the more restrictive age classification of 13. However, the scene was fleeting, sexual acts were implied rather than depicted, the women were scantily clad rather than nude, and – assessed in the context of the film as a whole – the scene can be described as having low impact. Thus, after some discussion, we reached a conclusion similar to that of the classifiers, that this scene and other references to sexual activity are of low impact. We were of the view that an appropriate advisory together with adult presence would be sufficient to deal with concerns about this scene as far as 10-year-olds are concerned. The use of the advisory 'S' indicating low impact sexual activity would enable parents to make informed choices about whether to take 10-year-olds in their custody to this film.

Brief references were made to 'shagging' as opposed to more explicit references to sexual activities. There are other references to 'shit', 'bugger off', 'balls', etc, but assessed within context, the language in the film can, at most, be described as moderate. A clear and deliberate attempt has been made to avoid the use of more explicit language.

The scene when Sparerib enthusiastically and with relish administers corporal punishment to boys may cause some anguish to 10-year-olds. However, viewers do not see the actual violence being administered, and most children will know that corporal punishment is now forbidden and was part of a bygone era. The other acts of being hit with bats, the trunk being pushed down the stairs, fire extinguishers being discharged, and rowdy bullying behaviour, all demonstrate the sort of pranks and misbehaviour that occur in boarding schools. We see the trunk being pushed down the stairs and a slightly disorientated pupil emerging. We agree with Mr Rosin that the acts are suggestive of violence, rather than being the depiction of violence. Neither impact nor post-traumatic stress is portrayed. Assessed collectively, these acts can be described as being of moderate impact justified by context.

The drinking and smoking scenes in the Mad House have repercussions for the boys, and the consequences of consuming alcohol are demonstrated in the English class the following day.

The Crazy 8 get up to outlandish pranks and undermine authority, while the prefects and Spare Rib act malicious and violate the rights of the Crazy 8 gang. One of the concerns is that this anti-social behaviour may be imitated by children aged 10, 11, or 12. As stated earlier, it would be simplistic and incorrect to describe this as anti-social film. It is much more nuanced, and has many redeeming and positive messages. The classifiers were particularly concerned about 10-year-olds seeing this film, and appeared less concerned about the impact on 11- and 12-year-olds. This concern can be met by requiring 10-year-olds (and children of 11 and 12) to be accompanied by adults, and by providing suitable advisories to enable parents and caregivers to make appropriate choices. The accompanying adult will be able to contextualise the behaviour and remind children of the costs and consequences of such behaviour.

Given the context of the film, the scenes of drinking and smoking may be described as mild, and the language used as mild to moderate. There were low impact scenes of implied sexual activity, and there was moderate implied violence. We are of the opinion that the age classification of '10-12PG' would be appropriate in the circumstances, provided that it is accompanied by advisories

for sexual activity, substance abuse, and violence. As is apparent from section 14(3) of the 2012 guidelines, this classification is applicable to films containing scenes that have classifiable elements with a mild (and in some instances moderate) impact. Assessing this in the context of this film justifies a classification of 10-12PG. The effect of this classification is that children between the ages of 10 to 12 can only watch the film if accompanied by an adult. This would enable parents who want to take their 10-year-olds to make an informed decision about whether they should see the film, while also allowing twelve-year-olds to watch a very entertaining and good South African film (accompanied by an adult, of course).

In the circumstances the following order is made:

Order

1. The decision of the classification committee assigning this film a restrictive age classification of '13(LVD)' is set aside.
2. The film *Spud 2 – The Madness Continues* is assigned a restrictive classification of '10-12PG (VDS)'.
3. The impact of this classification is that children under the age of 10 are not permitted to view the film, and children of the ages 10 to 12 are only permitted to view the film if accompanied by a parent or adult caregiver.

Dated at Durban on the 17th day of June 2013

Concurred by:

Ms Penny Marek

Revd Mike McCoy

Prof. Adelaide Magwaza

Adv. David Bensusan