

EXHIBIT 1



Analysis

As of: Oct 07, 2009

JOPLIN ENTERPRISES, an Arizona partnership; STRONG ARM MUSIC, a division of JOPLIN ENTERPRISES; and TEXAS LION PRODUCTIONS, a New York joint venture, Plaintiffs, v. JIMMY ALLEN and GAYE ANDERSON, individually and the marital community composed thereof, and d/b/a THE NEW ORLEANS PERFORMANCE HALL and THE NEW ORLEANS RESTAURANT; and SUSAN ROSS, Defendants.

NO. C91-1035C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SEATTLE DIVISION

1992 U.S. Dist. LEXIS 20762

**December 15, 1992, Decided
December 15, 1992, Filed and Entered**

SUBSEQUENT HISTORY: [*1] As Amended.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff copyright holders moved for summary judgment dismissing all of the counterclaims of defendant alleged infringers (infringers). The parties cross moved for summary judgment regarding a particular song, and plaintiffs requested statutory copyright damages.

OVERVIEW: The parties entered into an agreement that was intended to encompass any production substantially or principally based upon Janis Joplin and/or the music with which she was associated. Plaintiffs sued infringers for copyright infringement, and the infringers raised federal antitrust counterclaims and the affirmative defense of copyright misuse. The parties' cross motions for summary judgment on a specific song were pending before the court. Additionally, plaintiffs' motion for summary judgment dismissing all counterclaims and request for statutory copyright damages were pending. The court granted plaintiffs' motion for summary judgment on the particular song and held that the infringers were liable for copyright infringement regarding the song. The court awarded plaintiffs statutory damages under [17 U.S.C.S. § 504\(c\)\(1\)](#). The court denied plain-

tiffs' motion for summary judgment dismissing all of the counterclaims. However, because the federal claims were eliminated before trial, the court dismissed the infringers' state law counterclaims without prejudice.

OUTCOME: The court granted plaintiffs' cross motion for summary judgment regarding the particular song and denied the infringers' motion for summary judgment regarding the song. The court also granted plaintiffs statutory damages for infringement. The court denied plaintiffs' motion for summary judgment dismissing all of the counterclaims. However, the court dismissed the infringers' pendent state law counterclaims without prejudice.

CORE TERMS: summary judgment, counterclaims, contracting parties, state law, copyright infringement, federal claims, license, song, statutory damages, exclusive license, jurisdictional, infringement, partial

LexisNexis(R) Headnotes

Copyright Law > Conveyances > Interpretation > Parol Evidence

Copyright Law > Conveyances > Licenses > General Overview

[HN1]Where the parties to a copyright license dispute the meaning of a term within that license, the court must review the relevant extrinsic evidence to discern what the parties intended.

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Third Parties > General Overview

[HN2]Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning. The intent of contracting parties is controlling even though a third party would not so have understood the terms of the agreement.

Civil Procedure > Pleading & Practice > Pleadings > Counterclaims > General Overview

Civil Procedure > Dismissals > General Overview

Copyright Law > Civil Infringement Actions > Defendants > Misuse of Copyright & Unclean Hands Doctrine

[HN3]If the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well. Thus, where federal claims are eliminated before trial, judicial considerations will generally point toward declining to exercise jurisdiction over the remaining state law claims.

JUDGES: Coughenour

OPINION BY: JOHN C. COUGHENOUR

OPINION

AMENDED ORDER ON MOTIONS

A. Introduction

Pursuant to agreement of the parties at the October 21, 1992, status conference, the Court struck the trial date in this case and ordered that the parties resolve the remaining issues on the pleadings. The Court now faces three issues: (1) plaintiffs' motion for summary judgment dismissing all counterclaims, (2) the parties' cross motions for summary judgment on "Me and Bobby McGee", and (3) plaintiffs' request for statutory copyright damages. Having fully considered the motions, along with all relevant information, the Court finds and rules as follows:

B. Copyright Infringement Claims

In moving for summary judgment dismissing plaintiffs' copyright claim based on "Me and Bobby McGee," defendants argue that the Court already effectively ruled

on the issue in its Order on Motions for Partial Summary Judgment. The Order, however, simply denied that part of plaintiffs' motion for partial summary judgment which requested a finding that defendants were liable for copyright infringement regarding "Me and Bobby McGee." It is obviously inappropriate to infer from the Order a dispositive ruling that defendants [*2] did not infringe. Moreover, in the light of the parties' agreement to resolve their disputes without trial and their submission of further documentation, the Court finds it appropriate to reconsider its prior ruling.

Alternatively, defendants argue that because plaintiffs own only an option, as yet unexercised, to purchase an exclusive license covering use of the song, they may not sue for copyright infringement under the Copyright Act of 1976. Defendants' arguments concerning contract interpretation fall, however, in the light of evidence the plaintiffs have presented to the Court. The parties to the agreement aver that it was intended to encompass any production substantially or principally based upon Janis Joplin and/or the music with which she was associated. Such coverage would certainly extend to a production such as *Janis*. [HN1]Where the parties to a copyright license dispute the meaning of a term within that license, the court must review the relevant extrinsic evidence to discern what the parties intended. See, e.g., *Barris Industries, Inc. v. Worldvision Enterprises, Inc.*, 875 F.2d 1446, 1449-50 (9th Cir. 1989); *Apple Computer, Inc. v. Microsoft Corp.*, 709 F. Supp. 925, 928 (N.D. Cal. 1989). [*3] Defendants' citation to New York law would be applicable only if a dispute between the contracting parties existed regarding the meaning of their agreement. No such dispute exists here. Therefore, the reasonably inferred mutual intentions of the contracting parties are controlling. See *Restatement (Second) of Contracts, Sec. 201* at 83 (1981) [HN2]("Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning."); 3 A. Corbin, *Corbin on Contracts*, Sec. 538 at 58; Sec. 579 at 425-26 (intent of contracting parties is controlling even though a third party would not so have understood the terms of the agreement). Defendants, as strangers to the license agreement, have not and, indeed, cannot offer any direct evidence which contradicts the record concerning the undisputed intent of the contracting parties. Moreover, plaintiffs' exclusive license clearly became enforceable as of July 1, 1991, in accordance with the terms of the agreement and the intentions of the parties. Therefore, the Court GRANTS plaintiffs' cross-motion for summary judgment regarding "Me and Bobby McGee," and DENIES defendants' motion [*4] for summary judgment regarding the song.

Plaintiffs have elected an award of statutory damages, pursuant to 17 U.S.C. § 504(c), as to each of the

copyrighted songs infringed upon by defendants. They waive their right to a damages award under [17 U.S.C. § 504\(b\)](#). The Court awards plaintiffs statutory damages for infringement in the amount of \$ 500.00 per infringement, for a total of \$ 1,500.00. [17 U.S.C. § 504\(c\)\(1\)](#).

C. Defendants' Counterclaims

The jurisdictional basis for defendants' state law counterclaims existed in their relation to defendants' federal antitrust counterclaims and affirmative defense of copyright misuse. Because the related federal claims have been rejected by this Court the state law counter-claims properly belong in state court. [United Mineworkers v. Gibbs, 383 U.S. 715, 726, 16 L. Ed.2d 218, 86 S. Ct. 1130 \(1966\)](#) [HN3] ("if federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as

well"); [Nishimoto v. Federman-Bachrach & Associates, 903 F.2d 709, 715 \(9th Cir. 1989\)](#) [*5] (where federal claims are eliminated before trial judicial considerations will generally point toward declining to exercise jurisdiction over the remaining state law claims). Plaintiffs' motion to dismiss is **DENIED**. Defendants' motion to dismiss is **GRANTED**. The Court therefore **DISMISSES** defendants' state law counterclaims, without prejudice.

The clerk of this Court is directed to enter judgment pursuant to this Order, and to send copies of this Order and of the judgment to all counsels of record.

DATED this 15 day of December, 1992.

John C. Coughenour

United States District Judge