

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Copyright Law

A musician hired a freelance graphics artist to prepare master artwork for printed materials to be used to promote his recordings. He provided the concepts and words, which she turned into finished art. There was no formal agreement, and no discussion of who owned the copyright. When he didn't pay her bill, she cautioned a third party with possession of the master artwork that use of the artwork without her permission would infringe her copyright.

The musician brought suit in state court for tortious interference with economic relations, asserting as damages, *inter alia*, the profits he hoped to make from the recordings and his cost to replace the artwork. The artist counterclaimed for her fee. Judgment was entered for the artist and against the musician. Instead of appealing, the musician commenced a copyright infringement action in federal court, based largely upon the same events and damages.

Judge Jelderks agreed that the dispute over ownership of the

copyright was not barred, since the state court did not address that question and it had implications beyond the dispute previously litigated. The musician could also pursue his demand for possession of the art, and a claim for copyright infringement based on events not at issue in the state court proceeding. However, his copyright infringement claim was barred to the extent it was premised upon the same events and injuries at issue in the state court proceeding. Although claim splitting may sometimes be justified because no court can assert jurisdiction over the entire controversy, here the entire controversy could have been heard by the federal court.

The artist sent 20 prospective customers a portfolio containing samples of her work, including reproductions of the art at issue here. Judge Jelderks held that this was fair use.

Judge Jelderks also ruled that the musician was barred from recovering damages because, when he filed his copyright registration, he knowingly failed to disclose that the artist had previously registered her own copyright claim to the same

works, and he affirmatively denied that those works had previously been registered.

Finally, Judge Jelderks concluded that a trial would be necessary to decide whether the musician and artist were joint authors of the artwork, or if she was the sole author. Factual disputes also prevented the court from deciding whether an alleged oral assignment of a copyright interest could be retroactively ratified by a writing executed three years later and subsequent to an intervening written assignment for value of the same right.

Fleming v. Miles, 00-1288-JE,
(Opinion, June 14, 2001).

Plaintiff's Counsel:

William E. Goshert

Defense Counsel:

Lake James Perriguet

Attorney's Fees

In a diversity action for wrongful employment termination under ORS 659, a jury awarded the plaintiff \$30,000 in economic damages, \$93,750 in non-economic damages and \$250,000 in punitive damages. Judge Anna J. Brown granted plaintiff's motion

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for attorney's fees and costs after considering the factors set forth in ORS 20.075. The court expressly rejected the defense argument that the court should exercise its discretion to decline to award fees because the plaintiff had made "unreasonable" settlement demands. The court noted that the defendant failed to make any pretrial settlement offer.

Judge Brown awarded \$317,430 in fees and \$11,255 in costs. In reaching this conclusion, she allowed hourly attorney rates of \$150-\$195 and a legal assistant rate of \$75/hour. The Court generally rejected defense arguments that the case was handled by plaintiff's counsel inefficiently and she noted that it is to be expected that a plaintiff will expend more money investigating and presenting a case than a defendant.

Judge Brown did make reductions to the fee request where billing entries for legal research were insufficiently specific. She also reduced the award for excessive time billed for filing a summary judgment response, duplicative efforts relative to depositions and time spent preparing jury instructions and a verdict form. Oglesby v. Western Stone & Metal Corp., CV 99-492-BR (Opinion, Sept. 10, 2001).

Plaintiff's Counsel:
Tim Quenelle
Defense Counsel:
Sharon Toncray

RICO

Plaintiff and defendant competed to sell crane-based concrete conveyor systems to the Three Gorges Dam project on the Yangtze River in China, the largest hydropower project in the world. When nearly \$50M in contracts for the equipment were split between the two companies, plaintiff alleged that defendant won the bid as the result of bribery in the form of monetary payments and a job offer to a man on the committee evaluating the bids. Judge King granted summary judgment against plaintiff's RICO and Robinson-Patman Act claims. The intentional interference with prospective economic advantage claim remains for trial. Rotec Industries, Inc. v. Mitsubishi Corp., CV00-1394-KI, (Opinion of Sept. 14, 2001).

Plaintiff's Counsel:
Jeffrey Love
Defense Counsel: Paul Fortino

Procedure

Plaintiff filed an action against her former employer alleging claims under Title VII and ORS 659 for sexual harassment, retaliation and wrongful discharge. Plaintiff also

asserted a number of tort claims against three individual defendants, one of whom was her former supervisor, for an alleged rape. The employer removed the action from state court and plaintiff sought a remand based upon three defects in the removal: (1) failure to join all defendants; (2) failure to explain the absence of co-defendants in the removal notice; and (3) failure to state the basis for removal jurisdiction relative to the state law claims.

Judge Dennis James Hubel held that the failure to join all defendants would not require a remand where two of the individual defendants had not been served and where at least one federal claim was separate and independent of the state claims. The court found that the employer's failure to explain the absence of other defendants rendered the removal defective, but that plaintiff had waived this defect. Finally, the court held that the failure to identify the court's basis for jurisdiction over the state claims was a curable amendment, even beyond the 30 day window. Riggs v. Plaid Pantries, Inc., CV 01-338-HU (F & R, July 25, 2001; Adopted by Order of Judge Jones, Sept. 12, 2001).
Plaintiff's Counsel: Heather Carey
Defense Counsel:
Karen O'Kasey