IP/ENTERTAINMENT LAW WEEKLY CASE UPDATE FOR MOTION PICTURE STUDIOS AND TELEVISION NETWORKS

May 18, 2011

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Harney v. Sony Pictures Television, Inc., USDC D. Massachusetts, May 12, 2011

Click here for a copy of the full decision.

- District court rejects photographer's copyright infringement claim relating to plaintiff's photograph of a person who was the subject of defendants' made-for-television movie.

Plaintiff, a photographer, brought a copyright infringement action against Sony Pictures Television and A&E Television Networks, LLC, claiming that an image appearing in defendants' made-for-television movie infringed his photograph. The defendants moved for summary judgment, which the court granted.

Plaintiff, on assignment for a newspaper, took an un-posed photograph of a father and young daughter exiting a church on Palm Sunday in Beacon Hill, Massachusetts. The girl sat on her father's shoulders holding a palm leaf; the father held a church service program. Plaintiff placed the pair at the center of his photograph, and made them visible from the middle of the father's chest upward. In the photo, a tree and church steeple appear above the father and daughter; shadows are also visible. The newspaper published the photograph with an accompanying caption about Palm Sunday, identifying the father as Clark Rockefeller.

Months later, during a bitter divorce battle. the father in the photo fled Massachusetts with his daughter. In the subsequent search for the father, authorities placed plaintiff's photo on wanted posters. The manhunt was the subject of significant news coverage, partly because authorities discovered that the father, who claimed to belong to the Rockefeller family, was really a German man named Christian Gerhartsreiter.

Sony produced a made-for-TV movie about Gerhartsreiter that aired on A&E. In the movie, the actors portraying the father and daughter are at one point clothed and posed in a manner similar to their appearance in plaintiff's photograph. However, in the movie, the daughter did not hold a palm leaf; the father did not hold a church program; and the setting and lighting of the movie image differed from that of the photograph.

In assessing plaintiff's claim that the movie image infringed his photograph, the court found that the movie image did not copy protectable elements of the photograph, such that the image infringed on the photograph.

First, the court held that many elements of the photograph – the father and daughter's clothing and their poses in the photograph – were not protectable since they were simply facts that plaintiff did not create. Further, many of the arguably protectable elements of the photograph – the church that plaintiff positioned in the background, the lighting, the shadows – were not present in the movie image.

The court found that the works' only shared element that was arguably protectable was the position of the individuals relative to the boundaries of the photo. However, the court found this similarity to be "an element of minimal originality" that could not give rise to an infringement claim.

Forest Park Pictures v. Universal Television Network, Inc., USDC S.D. New York, May 10, 2011

Click here for a copy of the full decision.

- Court, applying Second Circuit caselaw, dismisses action for breach of implied-in-fact contract as preempted by the Copyright Act.

Plaintiff Forest Park Pictures, a California-based production company with its principal place of business in Los Angeles, and Tove and Hayden Christensen, individuals who are affiliated with Forest Park and residents of California and Canada, respectively, brought suit against defendant Universal Television Network ("USA Network"), a television production company with its principal place of business in New York, alleging that defendant misappropriated an idea for a television series they developed, using the concept without compensation. The district court dismissed the single-claim complaint, holding that plaintiffs' claim under state law was preempted by the Copyright Act.

Plaintiffs alleged that in 2005 they developed an idea for a television series titled "Housecall," based on the story of a doctor who, after being expelled from the conventional medical community for treating patients who could not pay their medical bills, moves to Malibu makes house calls to the rich and famous residents of Malibu – becoming a "concierge" doctor. Plaintiffs alleged that they created materials, including character biographies, concepts, themes, and plot/story lines for the television series, and pitched the concept to defendant by sending the materials to and meeting with a representative of the network, with the objective of persuading defendant to purchase the ideas for development. After meeting and communicating with plaintiffs, defendant rejected "Housecall." In 2009, the network began broadcasting "Royal Pains," a show about a doctor who, after being expelled from the conventional medical community for treating patients who are unable to pay, relocates to the Hamptons where he becomes a concierge doctor.

Plaintiffs' complaint alleged a single cause of action for breach of implied-in-fact contract against defendants, based on allegations that defendant knew of the entertainment industry convention that writers and creators pitch creative ideas to purchasers for the purpose of selling those ideas for compensation and with the expectation that they would be compensated in the event of use.

The court rejected plaintiffs' argument that California law applied to the case, reasoning that whether a federal statute preempts a state claim is a federal question and the court must apply the law of the circuit in which it sits. Citing Second Circuit case law, the court concluded that the plaintiffs' breach of implied-in-fact contract was preempted by the Copyright Act.

According to the court, state law claims are preempted by the Copyright Act where (1) the subject matter of the state law right falls within the subject matter of the Copyright Act and (2) the right asserted under state law is equivalent to the exclusive rights protected by federal copyright law.

First, the court found that the subject matter of plaintiffs' claim – the materials they created for "Housecall," including the character biographies, plots and story lines, and even the ideas – fell within the subject matter of the copyright laws. According to the court, the "preemptive reach of the Copyright Act also encompasses state-law claims concerning materials that are not copyrightable, such as ideas[,]" so that even if plaintiffs' claim was based on their ideas and concepts for the television show, their claim still fell within the subject matter of the Copyright Act.

The court then considered whether the rights asserted by plaintiffs were equivalent to the rights protected by the Copyright Act and concluded: "Plaintiffs' breach-of-implied-contract claim based on his alleged right to be compensated for the use of his idea for a television series is equivalent to the exclusive rights protected by the copyright law and is therefore preempted by the Copyright Act."

Having held that the claim for breach of implied-in-fact contract claim was preempted by federal copyright law, the court declined to address defendant's argument that the alleged contract was too vague to be enforced.

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