

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN 16 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: *[Signature]*
DEP CLERK

MICHAEL GALSTER

PLAINTIFF

v.

NO. 4:03CV01013 GTE

KELLY DUDA

DEFENDANT

FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF PRELIMINARY INJUNCTION

A hearing was held on January 14-16, 2004, concerning Plaintiff Michael Galster's Motion for Preliminary Injunction. At the conclusion of the hearing, during which both parties presented evidence, the Court rendered its opinion directing that the requested preliminary injunctive relief be granted for the purpose of maintaining the status quo until this matter can be heard on the merits. For the reasons stated herein and in open court during today's hearing, the Court makes the following findings and enters a preliminary injunction, the terms of which are described in paragraph 12 below.

1. The Court finds by a preponderance of the evidence that plaintiff Michael Galster is the author and owner of the documentary film "Factor Eight" and that the version of the film Mr. Duda claims as his own, entitled "Factor Eight: the Arkansas Prison Blood Scandal" is substantially similar to Mr. Galster's film.
2. The Court finds that the plaintiff Michael Galster provided the idea, the theme, the direction, the financing, and much of the research and the leads for the project to develop the film.
3. The Court finds that the defendant Kelly Duda, in working on and contributing to

the production of the video documentary, was in the eyes of the law and the contemplation of the parties working for hire for the plaintiff and subject to plaintiff's direction and control. The plaintiff provided the basic idea and theme for the production, paid the cost of the production, the labor and the research necessary to create the film. The plaintiff had the right to control the manner and means by which the film was made. The plaintiff provided the camera equipment, computer equipment and software, editing equipment and lighting equipment required for the making of the film. The Court credits the testimony of the plaintiff and his accountant, Bill Moss, concerning the financial arrangements and the amounts paid to the defendant for his work in making the film. The Court also credits the testimony of the plaintiff and Chris Case with respect to the control of the project, the work done and the relationship between the plaintiff and defendant.

4. The Court finds that the defendant Kelly Duda misappropriated the work product belonging to the plaintiff and used same without plaintiff's authority in putting together the eighty-five minute version of the film entitled "Factor 8: the Arkansas Prison Blood Scandal" which has been introduced as Plaintiff's Exhibit 25.

5. The Court finds that the defendant added segments to the film which were not authorized by the plaintiff, but that the film in its present form, which the defendant proposes to show at the Slam Dance Film Festival in Utah on January 18, 2004, nevertheless is substantially similar to plaintiff's version of the film at the time the defendant stopped working for the plaintiff and appropriated the plaintiff's property.

CONCLUSIONS OF LAW

6. The Court concludes that the plaintiff has satisfied the *Dataphase* requirements as set forth by the Eighth Circuit for the issuance of injunctive relief. See *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 111 (8th Cir. 1981). The inquiry is an equitable one, requiring the district court to consider "whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." *Dataphase*, 640 F.2d at 113 (footnote omitted).

7. The Court finds that the plaintiff will be irreparably harmed if injunctive relief is not granted. "In copyright-infringement cases, the general rule is that a showing of a *prima facie* case raises a presumption of irreparable harm." *Taylor Corp. v. Four Seasons Greetings, LLC*, 315 F.3d 1039, 1041-1042 (8th Cir. 2003).

8. The Court finds that the plaintiff is likely to prevail upon the merits. The federal statutory controlling law makes it clear that the plaintiff is entitled to a copyright on the film which he owns and is also entitled to prevent the defendant from claiming as his own a film substantially similar to the plaintiff's film. See *Hartman v. Hallmark Cards Inc.*, 833 F.2d 117, 120 (8th Cir. 1987). Under *Hartman*, to establish a claim for copyright infringement, the plaintiff must prove: (1) ownership of a copyright in Factor Eight; (2) access by the Defendant to the Plaintiff's work; and (3) substantial similarity between the two films in both ideas and expression. The Court finds that the plaintiff has produced substantial evidentiary support for all three elements and is entitled to the relief requested.

9. The Court finds that the harm to the defendant in the granting of the injunction is out-weighed by the harm to the plaintiff which would result if an injunction is not granted.

10. "The public interest is served in protecting the holders of valid copyrights from infringing activity." *Taylor Corp. v. Four Seasons Greetings, LLC*, 315 F.3d at 1042.

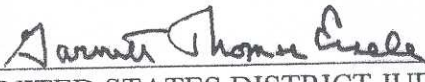
11. The Court reminds the parties that this hearing is not a trial on the merits. A trial on the merits could conceivably end up with a different result and different findings than those arising out of this preliminary hearing. It is obvious that all of the evidence relative to the issues raised has not been produced at this hearing. The primary purpose of the injunctive relief is to preserve the status quo pending the outcome of the trial on the merits.

12. The defendant Kelly Duda, his attorneys, agents and employees, are hereby ordered not to release the film, "Factor 8, the Arkansas Prison Blood Scandal" or to permit the film to be shown to or by anyone, other than in connection with this litigation, pending the outcome of the trial on the merits.

13. Pursuant to Fed. R. Civ. P. 65(c), the Court has considered whether to require the posting of security for the granting of this injunction. The Court, in the exercise of its discretion, finds that no bond is required. The Court intends to schedule this case for an expedited trial on the merits. Additionally, although defendant has testified as to the loss of an opportunity, there has been no showing that actual monetary loss is likely to occur as a result of the granting of this preliminary injunction.

14. At the plaintiff's request and without objection by the defendant, the defendant is directed to produce to the Court for safe-keeping, pending further orders of the Court, the source tapes for the film, the Cheetah hard drives, and the approximately 20,000 pages of research materials. Any expenses incurred by the Court in connection therewith shall be paid by the plaintiff.

IT IS SO ORDERED this 16th day of January, 2004.


UNITED STATES DISTRICT JUDGE