UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
***AMENDED**
CIVIL MINUTES – GENERAL **'O' JS-6**

Case No.	2:15-CV-05642-CAS-JCx	Date	March 16, 2020
Title	GRAY; ET AL. V. PERRY; ET AL.		

Present: The Honorable	CHRISTINA A. SNYDER	
Catherine Jeang	Chia Mei Jui	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Michael Kahn (By Telephone)	Jeffrey Movit Aaron Wais Christine Lepera Gabriela Nourafchan Vincent Chieffo
*Attorney Present for Amici Musicologist: *Kenneth Freundlich (By Telephone)	

Proceedings: DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, OR ALTERNATIVELY FOR A NEW TRIAL (ECF No. 483, filed October 9, 2019; ECF No. 435, filed July 25, 2019; and ECF No. 459, filed July 31, 2019)

PLAINTIFFS' MOTION FOR AN AWARD OF PREJUDGMENT INTEREST (ECF No. 488, filed October 10, 2019)

I. INTRODUCTION & BACKGROUND

This copyright infringement action concerns the allegation that an 8-note ostinato[1] from defendants' song "Dark Horse" infringes upon the plaintiffs' copyright in the musical composition of the 8-note ostinato in their song "Joyful Noise." Following a jury trial, the jury found for the plaintiffs, awarded damages, and the Court entered judgment. Now before the Court are defendants' renewed motions for judgment as a matter of law, or in the alternative for a new trial, as well as plaintiffs' motion for prejudgment interest on its damages award.

[1] An ostinato is a short musical phrase or rhythmic pattern repeated in a musical composition. See "Ostinato," Encyclopaedia Brittanica (15th ed. 2013).

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Plaintiffs Marcus Gray (P.K.A. Flame), Emanuel Lambert, and Chike Ojukwu filed the operative third amended complaint on November 1, 2016, naming defendants Katheryn Elizabeth Hudson (P.K.A. Katy Perry), Jordan Houston (P.K.A. Juicy J), Lukasz Gottwald (P.K.A. Dr. Luke), Sarah Theresa Hudson, Karl Martin Sandberg (P.K.A. Max Martin), Henry Russell Walter (P.K.A. Cirkut), Kasz Money Inc., Capitol Records LLC, Kitty Purry Inc., UMG Recordings Inc., Universal Music Group Inc., WB Music Corp., BMG Rights Management (US) LLC, and Kobalt Music Publishing America, Inc. See ECF No. 172 ("TAC"). In substance, plaintiffs claim that the instrumental beat of the ostinato in "Joyful Noise" is protectable original expression, and that the defendants had access to and copied that protectable original expression when they composed an allegedly infringing ostinato for their song "Dark Horse."

The Court held a jury trial from July 17, 2019, through August 1, 2019. The jury entered verdicts finding defendants liable to plaintiffs for copyright infringement, and awarding plaintiffs $2.8 million in damages. The Court entered judgment in favor of plaintiffs on September 11, 2019. See ECF No. 473. Defendants filed the instant renewed motions for judgment as a matter of law, or in the alternative for a new trial, on October 9, 2019. See ECF No. 485 ("JMOL"). Plaintiffs filed an opposition on November 20, 2019. See ECF No. 499 ("JMOL Opp."). Defendants filed a reply on December 27, 2019. ECF No. 508 ("JMOL Reply"). In addition to these submissions from the parties, a group of musicologists submitted an amicus brief in support of defendants' motion for renewed judgment as a matter of law, or in the alternative a new trial, on January 9, 2020. See ECF No. 514 ("Am. Br.").

Plaintiffs, meanwhile, filed a motion for an award of prejudgment interest on October 10, 2019. See ECF No. 488 ("MPJI"). Defendant Katy Perry filed an opposition on November 20, 2019. See ECF No. 498 ("Perry MPJI Opp."). Perry also joined in the opposition filed by the balance of the defendants, which was filed on the same day. See ECF No. 499 ("MPJI Opp."). Plaintiffs filed a reply on December 27, 2019. See ECF No. 505 ("MPJI Reply").

Having reviewed the trial record, the parties' submissions, and the submissions from amici, the Court finds and concludes as follows.

II. LEGAL STANDARDS

A. Judgment as a Matter of Law

Judgment as a matter of law is appropriate when "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue[.]" Fed. R. Civ. P. 50(a)(1); see also Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 149 (2000). If the court does not grant a motion for judgment as a matter of law pursuant to Rule 50(a), a party may file a renewed motion for judgment as a matter of law after the trial. See Fed. R. Civ. P. 50(b). It is well-settled that the standard for judgment as a matter of law is the same as the standard for summary judgment. Reeves, 530 U.S. at 150 (citing Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 250–52 (1986)). The prior denial of summary judgment does not preclude a district court from later granting judgment as a matter of law pursuant to Rule 50 because the latter tests the sufficiency of the evidence actually presented at trial. See Lies v. Farrell Lines, Inc., 641 F.2d 765, 772 (9th Cir. 1981) (explaining that, after trial, a court may have "a better basis on which to determine the existence of material issues," including that there was never a true issue of fact at all).

Judgment as a matter of law is accordingly appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of identifying relevant portions of the trial record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each claim upon which the moving party seeks judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

If the moving party meets its initial burden, the opposing party must then set out specific facts on which a reasonable jury could have relied in order to reach the verdict that the motion challenges. Anderson, 477 U.S. at 250. In light of the facts presented by the nonmoving party, along with any undisputed facts, the Court must then decide whether the moving party is entitled to judgment as a matter of law. See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 631 n. 3 (9th Cir. 1987). The Court must "view the trial evidence in the light most favorable to the non-moving party, and if conflicting inferences may be drawn from the facts presented at trial, the case must go to the jury." Reed v. Lieurance, 863 F.3d 1196, 1204 (9th Cir. 2017) (internal marks and citations omitted).

In entertaining a motion for judgment as a matter of law, the court should review all of the evidence in the record. Reeves, 530 U.S. at 150. In so doing, however, the Court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. Id. (citations omitted). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." Anderson, 447 U.S. at 255. Thus, although the Court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. Reeves, 530 U.S. at 151 (citing 9B C. Wright & A. Miller, Federal Practice and Procedure, § 2529 (3d ed. 2019)). In other words, the Court should give credence to the evidence favoring the nonmovant as well as that "evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses." Reeves, 530 U.S. at 151 (citing Wright & Miller, supra, § 2529).

B. Motion for a New Trial

A court may grant a new trial if the jury's verdict is against the clear weight of the evidence. Landes Const. Co., Inc. v. Royal Bank of Can., 833 F.2d 1365, 1371 (9th Cir. 1987). In considering such a Federal Rule of Civil Procedure 59 motion, unlike a motion for judgment as a matter of law, the court may "weigh the evidence and assess the credibility of witnesses, and need not view the evidence from the perspective most favorable to the prevailing party." Id. at 1371–72 (citing 11 C. Wright & A. Miller, Federal Practice and Procedure, § 2806, at 48–49 (1973) ("If, having given full respect to the jury's findings, the judge on the entire evidence is left with the definite and firm conviction that a mistake has been committed, it is to be expected that he will grant a new trial.")).

Additionally, if the Court "determines that the damages award is excessive, it . . . may grant defendant's motion for a new trial or deny the motion conditional upon the prevailing party accepting a remittitur." Fenner v. Dependable Trucking Co., 716 F.2d 598, 603 (9th Cir. 1983). The district court may grant a new trial even though substantial evidence supports the jury's verdict. See Oltz v. St. Peter's Comm. Hosp., 861 F.2d 1440, 1452 (9th Cir. 1988).

C. Prejudgment Interest

"Prejudgment interest is available under the Copyright Act" in the discretion of the district court in situations of "undisputed copyright infringement" to "discourage needless

license fees." Polar Bear Productions, Inc. v. Timex Corp., 384 F.3d 700, 716 & n. 12, 718 (9th Cir. 2004). Unlike claims for prejudgment interest that arise under many state laws, "federal law does not require the denial of prejudgment interest just because [a] claim was not 'liquidated.'" Golden State Transit Corp. v. City of Los Angeles, 773 F. Supp. 204, 212 (C.D. Cal. 1991). "Federal courts clearly have the latitude to award prejudgment interest in cases arising under the patent, copyright, antitrust laws, and tax laws" where the "claims are . . . not liquidated." Id.

In "vigorously contested" cases, however, a district court may properly decline to impose prejudgment interest. Societe Civile Succession Guino v. Renoir, 305 F. App'x 334, 339 (9th Cir. 2008) (denying prejudgment interest because infringement was not "undisputed"). If prejudgment interest is granted, it should be awarded as "an element of compensation, [and] not [as] a penalty." Oracle USA, Inc. v. Rimini St., Inc., 879 F.3d 948, 964 (9th Cir. 2018) (quoting Barnard v. Theobald, 721 F.3d 1069, 1078 (9th Cir. 2013)).

III. JUDGMENT AS A MATTER OF LAW, OR FOR A NEW TRIAL

To prove copyright infringement, a plaintiff must establish (1) "ownership of a valid copyright," and (2) "copying of constituent elements of the work that are original." Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991).

The sole issue at trial concerned the second element: whether defendants' "Ostinato 2" in "Dark Horse" infringed upon plaintiffs' ostinato in "Joyful Noise" by copying constituent elements of plaintiffs' ostinato that are original. See ECF No. 486 ("Trial Tr.") at 1349:24-1350-3. This kind of copying can be proven either (a) with direct evidence that the defendant actually copied the work, or (b) by showing that the defendant (i) had access to the work and (ii) that the works are "substantially similar." L.A. Printex Indus., Inc. v. Aeropostale, Inc., 676 F.3d 841, 846 (9th Cir. 2012). The plaintiffs only assert copying pursuant to the latter method of proof: substantial similarity and access. See Trial Tr. at 1163:21-1164-20.

Substantial similarity is determined by "a two-part test of extrinsic similarity and intrinsic similarity." Three Boys Music Corp. v. Bolton, 212 F.3d 477, 485 (9th Cir. 2000). The extrinsic test raises a question of law that "may often be decided as a matter of law" by the court. See Benay v. Warner Bros. Entm't, 607 F.3d 620, 624 (9th Cir. 2010); e.g., Morrill v. Stefani, 338 F. Supp. 3d 1051, 1058 (C.D. Cal. 2018) ("A plaintiff who cannot

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