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Although the statute of limitations had not yet run, Ninth Circuit affirms dismissal of Raging Bull copyright case on laches grounds

By John A. Chatowski and Robert A. Weikert

Adding to what concurring Circuit Judge William Fletcher called a “severe circuit split,” the Ninth Circuit Court of Appeals affirmed an order dismissing a closely watched copyright case involving the iconic film Raging Bull. Paula Petrella v. Metro-Goldwyn-Mayer, Inc., et al., Case Nos. 10-55853 (9th Cir. August 29, 2012). The Copyright Act imposes a three-year statute of limitations on copyright infringement claims that begins to run from the date of the last act of infringement. 17 U.S.C. § 507(b). Thus, in a case involving ongoing infringement there may not be a viable statute of limitations defense. In such cases, however, some courts, including the Ninth Circuit, have applied the equitable doctrine of laches to bar purportedly stale claims. The Petrella decision is the latest pronouncement out of this Circuit, and continues to advance a position which Judge Fletcher characterizes as “the most hostile to copyright owners of all of the circuits.”

Paula Petrella (“Petrella”) is the daughter of Frank Petrella, who was a long-time friend of boxer Jake LaMotta (“LaMotta”). Frank Petrella and LaMotta collaborated on two screenplays—both of which were registered for copyright protection with the United States Copyright office—that allegedly became the basis for the 1980 film Raging Bull. Both screenplays listed Frank Petrella as the sole author of the works, although the title page of the 1963 screenplay listed LaMotta as a collaborator, and a subsequent book listed LaMotta, Joseph Carter, and “Peter Savage,” a pseudonym for Frank Petrella, as authors. In 1976, Frank Petrella and LaMotta entered into an agreement with a production company in which they assigned their rights in the screenplays and book, and in 1978, United Artists Corporation, a subsidiary of Metro-Goldwyn-Mayer, acquired the rights to the film Raging Bull from the production company. The film was released in 1980. Frank Petrella died the following year.

In 1990, Paula Petrella learned of a Supreme Court decision that she believed might impact her renewal rights in the copyrights of the two screenplays and book that she had inherited from her father. She retained an attorney, who filed a renewal application for the 1963 screenplay the following year. In 1998, the attorney contacted the defendants, claimed that Petrella had obtained the renewal rights in the 1963 screenplay, and asserted that Raging Bull was an infringement on those rights. Two years of correspondence between the parties ensued, but Petrella did not sue until 2009, nineteen years after she learned of the Supreme Court decision that prompted her to hire an attorney, and eleven years after her attorney first contacted the defendants.
The district court dismissed Petrella’s suit on the grounds that her claims were barred by the equitable doctrine of laches, and the Ninth Circuit affirmed. In his opinion, which was joined by visiting District Court Judge Jack Zouhary of the Northern District of Ohio, Circuit Judge Raymond Fisher wrote that to prevail on their laches defense, the defendants were required to prove that “(1) the plaintiff delayed in initiating the lawsuit; (2) the delay was unreasonable; and (3) the delay resulted in prejudice.” Judge Fisher held that the defendants had established in their motion for summary judgment that there were no triable issues of material fact based on the specific facts of the case, and thus affirmed the district court’s order dismissing the case.

In a strongly worded concurring opinion, Judge Fletcher wrote that he was compelled to concur in Judge Fisher’s opinion based on the Ninth Circuit’s decision in *Danjaq LLC v. Sony Corp.*, 263 F.3d 942 (9th Cir. 2001). Nevertheless, he chided his colleagues for maintaining a defense which is at odds with decisions from the Fourth Circuit—where laches is not a recognized defense—and the Eleventh, Second, and Sixth Circuits (the same circuit, by the way, that has appellate jurisdiction over the court where visiting District Court Judge Zouhary sits)—which either places a higher burden of proof on the defense of laches, or only limits the remedies available to a plaintiff if such a defense is established. Judge Fletcher contended that because there is nothing in the Copyright Act or its legislative history to support the existence of such a defense, the Ninth Circuit “has taken a wrong turn in its foundation and application of laches and copyright cases.”

Whether the Ninth Circuit takes this opportunity to revisit *Danjaq* en banc, or the Supreme Court becomes involved to settle the circuit split over the application of the doctrine of laches, is unclear. What is clear is that (in at least the Ninth Circuit) copyright holders must be vigilant and act quickly when they learn of acts of potential ongoing copyright infringement, even if the actual statute of limitations has not yet run.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- John A. Chatowski at 415-984-8410 or jchatowski@nixonpeabody.com
- Robert A. Weikert at 415-984-8385 or rweikert@nixonpeabody.com