3-8-2017

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Cardozo Arts & Entertainment Law Journal

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BY LEEOR AMSALEM/ ON MARCH 8, 2017

A new door has opened regarding copyright infringement suits, both old and new, due to the ruling in *Petrella v. MGM*.[1] The Copyright Act states that "no civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued."[2] In simpler words, the statute of limitations for copyright infringement is three years. "If infringement occurred within three years prior to filing, the action will not be barred even if prior infringements by the same party as to the same work are barred because they occurred more than three years previously."[3]

It is widely recognized that the separate-accrual rule attends the copyright statute of limitations. Under that rule, when a defendant commits successive violations, the statute of limitations runs separately from each violation. Each time an infringing work is reproduced or distributed, the infringer commits a new wrong. Each wrong gives rise to a discrete "claim" that "accrue[s]" at the time the wrong occurs. In short, each infringing act starts a new limitations period.[4]

In 2014, the *Petrella* court, in a 6-3 decision, voted against laches as a defense. The case involved an infringing work, a motion picture screenplay copyrighted in 1963 titled "Raging Bull."[5] The work was based on Jake LaMotta, a boxing champion, and Frank Petrella.[6] The two men "assigned their rights and renewal rights, which were later acquired by respondent United Artist Corporation, a subsidiary of respondent Metro-Goldwyn-Mayer, Inc. (collectively, MGM)."[7] Frank Petrella died during the initial copyright term and his renewal rights reverted to his heirs[8] as confirmed by the case *Stewart v. Abend*.[9] His daughter, Paula, became the sole owner of the copyright in 1991 when she renewed the rights.[10] Seven years later, she informed MGM that their exploitation of the motion picture violated her sole right[11]and threatened to bring a law suit.[12] Nine years later she filed an infringement suit "limited to acts of infringement occurring on or after January 6, 2006."[13] MGM moved for summary judgment on the basis of laches.[14] They argued that Petrella's 18-year delay in filing suit was "unreasonable and prejudicial to MGM."[15] Both the District Court and the Ninth Court held that laches barred Petrella's complaint.[16] The Supreme Court reversed.[17]

Before understanding the Supreme Court's reasoning, it is important to comprehend the concept of laches. Laches is a "doctrine permitting dismissal of a suit because a plaintiff's unreasonable delay in asserting a right or privilege has been detrimental to the defendant's ability to make a defense."[18] Take *Chirco v. Crosswinds Cmyts., Inc*, a case cited

in *Petrella*. There the defendants were alleged to have used the plaintiff's copyrighted architectural designs. Even though plaintiffs were aware of defendant's project, they didn't act to cease development until 169 of the planned 225 condominiums were built.[19] The Sixth Circuit found that relief would be inequitable because they failed to stop the project until it was near completion and it would pose "unjust hardships" upon both the defendants and third parties.[20]

In *Petrella*, the Supreme Court reversed the lower court rulings and held that the "Copyright Act's three-year look back provision allowed for plaintiffs to defer filing suit until such time that litigation appears to be a potentially beneficial venture."[21] Because of the separate-accrual rule, "every act of infringement is essentially subject to its own statute of limitations, meaning that any of MGM's sales in the three years prior to 2009 fell within the time limit, and future sales could potentially be stopped."[22]

So what does this mean for the entertainment industry? Advocates of the ruling believe that the playing field will now be leveled, since it "has previously been heavily slanted in favor of entertainment studio defendants."[23] Entertainment industry groups believe that "this ruling will have a chilling effect on innovation that will be very deleterious to the entertainment industry as a whole."[24] Now, in the digital age, works have a longer self-life and the potential to be re-released[25] and laches have been a common defense to these entertainment groups.[26] Since *Petrella*, the entertainment industry has seen potential for a significant dispute to rearise. The case revolves around the famous song "Stairway to Heaven" by Led Zeppelin. The estate of Randy Craig Wolfe, guitarist for the 1960s band "Spirit" claims that Led Zeppelin copied the opening guitar riff of "Stairway to Heaven" from a Spirit's song called "Taurus."[27] Back then a suit was never filed.[28] Now, with *Petrella*, the estate may have a viable claim and could potentially recover three years' worth of profits from such a classic song.[29]

The "Stairway to Heaven" case now raises a serious dilemma: plaintiffs can now wait and see if it is worth it bring suit against the alleged copyrighted work. A "plaintiff can 'wait out' the years in which it knows deductible expenses will be high, and sue only in those years where the profit margin is large."[30] This scenario was addressed in Justice Breyer's dissenting opinion:

"[S]uppose the plaintiff has waited until he becomes certain that the defendant's production bet paid off, that the derivative work did and would continue to earn money, and that the plaintiff has a chance of obtaining, say, an 80% share of what is now a 90% pure profit stream."[31]

This does not mean that there is no hope for copyright infringement defendants. The court did leave some options available, such as "equitable estoppel," which would come into play when a plaintiff deceived a defendant into believing that it would not sue and the defendant

relied on that assurance. Furthermore, when deciding these cases, a court may adjust plaintiff's relief based on its delay in filing suit. These are both very broad options, so it is now on the industry to take stricter measures when protecting their copyrights. Some measures these companies can take include, but are not limited to, having even more elaborate document retention systems, "paper all aspects of creation and production," provide "comprehensive indemnification agreements and present any documentation evidencing creation," and make sure to keep in touch with former employees that worked on the project in case witnesses are needed later on.[32]

The *Petrella* decision has both pros and cons, depending on what side of the suit you're on. The holding does seem to benefit plaintiffs, but maybe in subsequent cases that arise, due to *Petrella*, the courts will come up with more viable options for defendants.

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[1] 134 S. Ct. 1962 (2014).

[2] 17 U.S.C. § 507(b).

[3] Nimmer on Copyright 12.05 (B)(1)(b).

[4] 34 S. Ct. 1962.

[5] *Id*.

[6] *Id* at 1964.

[7] *Id*.

[8] *Id*.

[9] 495 U.S. 207, 221 (1990).

[10] *Id*.

[11] *Id*.

[12] *Id* at 1965.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Laches*, Miriam WEbster Dictionary

[19] Chirco v. Crosswinds Cmtys., Inc., 474 F.3d 227 (6th Cir. 2007).

[20] *Id*.

[21] Todd McCormick, *How 'Raging Bull' Case Could Impact Entertainment Industry*, Law360 (July 2, 2014, 10:08 AM), https://www.law360.com/articles/552689/how-raging-bull-case-could-impact-entertainment-industry.

[22] Daniel Fisher, *'Raging Bull' Decision Breathes New Life Into Late-Breaking Copyright Suits,* Forbes (June 2, 2014, 9:52 AM), http://www.forbes.com/sites/danielfisher/2014/06/02/raging-bull-decision-breathes-new-life-into-late-breaking-copyright-suits/#3b385a344190.

[23] *Supra* note 21.

[24] *Id*.

[25] *Supra* note 22.

[26] *Id*.

[27] *Supra* note 21.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] 134 S. Ct. 1962 (2014).

[32] *Supra* note 22.