5-1-1993

Defamation: Perry Russo v. Conde Nast Publications D/B/A Gentleman's Quarterly, 806 F.Supp. 603 (E.D. La. 1992)

COPYRIGHT LAW

JOHN FORWARD v. GEORGE THOROGOOD, No. 91-14125, 1993 U.S. App. LEXIS 1360 (1st Cir. Jan. 29, 1993).

Fan of a certain musical group appealed final judgment entered against him determining the copyright ownership of several unpublished tape recordings of the group. Plaintiff John Forward, a fan of the musical group "George Thorogood and the Destroyers," claimed copyright ownership of tape recordings of the band performing. The recordings were made at a recording session which had been arranged and paid for by the plaintiff. Afterwards, the members of the band had given the plaintiff the tapes for his personal enjoyment. Twelve years later, in which time the band had come to enjoy commercial success, and after the band members had objected to plaintiff's plans to sell the tapes to a record production company, plaintiff filed this action seeking a declaratory judgment regarding copyright ownership of the tapes. The band filed a counterclaim for declaratory and injunctive relief.

Held: Plaintiff's theories of copyright ownership based on ownership and possession of the tapes and conveyance of the tapes to him by the band members fail because the performer of a musical work is the author and, therefore, copyright owner of that work. Additionally, the band members did not intend to convey copyright ownership to the plaintiff. Furthermore, the plaintiff's copyright ownership theories based on the "work for hire" and "joint authorship" doctrines are not tenable because plaintiff neither commissioned, employed, nor compensated the band members to create the tapes, nor did plaintiff make any musical or artistic contribution to the creation of the tapes. Finally, the plaintiff, by definition, is not a co-owner of the copyright as a producer because he did not artistically supervise or edit the production of the tapes. *Affirmed.*

J.B.

DEFAMATION

PERRY RUSSO v. CONDE NAST PUBLICATIONS D/B/A *Gentleman's Quarterly*, 806 F.Supp. 603 (E.D. La. 1992).

Plaintiff brought defamation claim against magazine. Plaintiff Perry Russo, who was the prosecution's principle witness against Clay Shaw in a case wherein Shaw was accused of having conspired to assassinate President John F. Kennedy, was described in defendant's magazine, *Gentleman's Quarterly*, as a "grifter." The description was the sole reference to the plaintiff in a published

article concerning the attempted prosecution of Clay.

Held: Plaintiff's claim fails the initial threshold consideration of whether the statement complained of is defamatory. As a matter of law, the term "grifter" is not defamatory per se. Moreover, Russo failed to establish ordinary malice toward him on the part of the defendant. *Summary Judgment for Defendant.*

J.B.

LABOR LAW

THE PHILADELPHIA MUSICAL SOCIETY, LOCAL 77 v. AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, No. 92-3386, 1992 U.S. Dist. LEXIS 19263 (E.D. Pa. Dec. 2, 1992).

Local of an international union of musicians asserted that union violated federal labor laws in negotiating and ratifying a certain labor contract. Plaintiff, a musicians' local, challenged provisions of a collective bargaining agreement between its parent union and the League of American Theaters and Producers, an employer of musicians. The provisions at issue limited the number of local musicians that were required to be hired for touring productions performed in a local venue. Plaintiff alleged that pursuant to the Labor-Management Relations Act, the defendant union violated its bylaws in negotiating the provisions in question. Additionally, the plaintiff alleged that the procedures used by the union to ratify the agreement violated the Labor-Management Reporting and Disclosure Act of 1959.

Held: Both the defendant union's bylaws and its past practice authorized it to designate a maximum number of local musicians to be employed in local performances of touring theatrical productions. Therefore, the union's interpretation of its bylaws was not unreasonable. Regarding the plaintiff's claim of improper ratification, ratification of the collective bargaining agreement occurred in another jurisdiction. Pursuant to Fed. R. Civ. Pro. 12(b)(3) - improper venue - it was not necessary to reach that claim on its merits and it was dismissed without prejudice. *Summary Judgment for Defendant on negotiation claim; ratification claim Dismissed Without Prejudice.*

J.B.

COPYRIGHT LAW - SUBSTANTIAL SIMILARITY TEST

DENKER v. WARNER BROTHERS, INC., No. 91 Civ. 0076 (MBM),