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Columbia Pictures Industries, Inc. v. Professional Real Estate Investors, Inc., 944 F.2d 1525 (9th Cir. 1991), *cert. granted*, 112 S. Ct. 1557 (1992)

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1981.

The Second Circuit Court of Appeals stated that in seeking an injunction against Disney's further use of the songs, Bourne was required to initially demonstrate irreparable harm. Although irreparable harm is presumed when a plaintiff establishes a *prima facie* case of copyright infringement, the court stated that it is equally settled that a party's delay in the enforcement of copyrights rebuts that presumption. The court held that Disney's use of the songs for several decades and Bourne's failure to object to the violations of its claimed contractual rights demonstrated a lack of urgency for preliminary relief. Because Bourne failed to establish the existence of irreparable harm, the circuit court held that Bourne was not entitled to an injunction and reversed the judgment of the district court.

-J.B.K.

COLUMBIA PICTURES INDUSTRIES, INC. v. PROFESSIONAL REAL ESTATE INVESTORS, INC., 944 F.2d 1525 (9TH CIR. 1991), *cert. granted*, 112 S. Ct. 1557 (1992).

A group of California movie studios brought a copyright infringement action against hotel operators (PRE), challenging the operators' rental of video discs to hotel guests to watch in their hotel suites. PRE filed antitrust counterclaims against the movie studios, alleging that the copyright infringement suit was a sham brought with the intent to monopolize and restrain trade in violation of the Sherman Act. The United States District Court for the Central District of California granted summary judgment to the hotel operators (PRE) on the infringement claim, and this was affirmed on appeal. However, the same district court entered summary judgment in favor of the movie studios on the antitrust counterclaim, and PRE appealed, alleging:

- (1)the court focused only on the lawsuit and failed to consider PRE's other allegations of anticompetitive conduct;
- (2)the copyright infringement action was a sham, thus the studios have no immunity from antitrust liability under the Noerr-Pennington doctrine;
- (3)the court should have permitted PRE additional discovery to prove that he copyright lawsuit was a sham; and,
- (4)the district court abused its discretion in dismissing the pendent state law claims when it dismissed PRE's counterclaim.

The Ninth Circuit Court of Appeals affirmed the district court's entry of summary judgment for the studios on the antitrust

counterclaim. They found that the studios did not refuse to deal when they rejected PRE's offer of settlement, and this refusal to settle afforded no basis for antitrust liability. The court held that PRE failed to demonstrate any injury resulting from the alleged antitrust activity, and that in order to waive Noerr-Pennington immunity, PRE had to show that the original lawsuit was legally baseless before looking at any subjective intent to perpetuate anticompetitive conduct on the part of Columbia. The court went on to find that Columbia's copyright suit, although unsuccessful, was brought with probable cause, and that a suit brought with probable cause did not fall within the sham exception to the Noerr-Pennington doctrine. Thus, the court found no need for further discovery on the part of PRE to determine the studios' subjective intent, because the first prong of the immunity waiver test, involving baseless claims, was not met. According to the court, PRE was not prejudiced by bringing up the pendent state law claims in California state courts, because the state court tolls the statute of limitations period during the time a suit is pending in federal court. Thus, the court held that the district court did not abuse its discretion, and its decision was affirmed in all aspects.

-C.L.

MCNEIL V. NATIONAL FOOTBALL LEAGUE, 790 F. SUPP. 871  
(D.MINN. 1992).

Plaintiffs, eight professional football players whose National Football League contracts expired, filed antitrust claims against the National Football League (NFL) and the NFL team owners under section 1 of the Sherman Act seeking an injunction to permanently bar the NFL and the NFL team owners from implementing certain proposals under "Plan B". In 1988, the NFL presented to the National Football League Players Association (NFLPA) a proposal, entitled "Plan B", to enter a new system of player restraints. Under "Plan B", the NFL proposed, *inter alia*, to eliminate all contract negotiations with the individual football players and establish a league-wide wage scale. By eliminating competition among the different NFL teams, plaintiffs claim that the proposed wage scale is violative of the Sherman Antitrust Act. Both parties brought various motions before the district court.

First, the district court denied the players' motion for a permanent injunction based on testimony that the NFL, although already having implemented certain other proposals under "Plan B", had no immediate intention of implementing the league-wide wage