

Insights: Industry Summaries

IP Industry Summary: We Three Kings: Trio of Rap Stars Successfully Dismisses Infringement Action Brought by Gospel Songwriters.

March 17, 2015

***Warrick v. Roberts*, 34 F. Supp. 3d 913 (N.D. Ill. 2014)**

When gospel musicians Clara Shepherd Warrick and Jimmy Lee Weary created the song “I’m So Grateful (Keep in Touch)” (“Grateful”), in 1976, they apparently only ever desired for the song to be performed “as spiritually uplifting gospel music.” Some thirty-six years after the songwriting duo composed “Grateful,” however, rappers Rick Ross, Dr. Dre, and Jay Z used the tune as background music for a hip hop track entitled “3 Kings.” The themes in “3 Kings” were decidedly not consistent with “spiritually uplifting gospel music.” Accordingly, Shepherd and Weary sued the rappers, and Universal Music Publishing Group, the organization that had licensed the song, for infringing their rights in “Grateful.”

Unfortunately for the songwriting duo, they had entered into an agreement in 1974 that, by its terms, transferred extensive rights in any musical composition the musicians created during the life of the agreement. Universal Music Publishing Group, the successor-in-interest to the 1974 agreement with Shepherd and Weary, had licensed “Grateful” to the trio of rappers and their production companies. In light of these facts, the defendants moved to dismiss the action for failure to state a claim.

To combat the Defendants’ motion, Mr. Weary contended that his signature had been forged on the 1974 agreement, thus invalidating its terms. The composing duo also argued that the 1974 agreement had expired by the time “Grateful” was composed in 1976. Ruling on summary judgment, the Court accepted Mr. Weary’s version of the facts and assumed his name had been forged. The Court nevertheless dismissed Shepherd and Weary’s claim, because it found that, despite the dubious nature of Mr. Weary’s signature, Universal Music was still at least a co-owner of “Grateful.”

First, the Court noted that a co-owner of a copyright cannot be liable to another co-owner for infringement. “Rather, each co-owner has an independent right to use or license the use of the copyright.” Second, the Court determined that Ms. Shepherd never contested the authenticity of her signature on the 1974 agreement, and that therefore at the very least she had transferred her rights in “Grateful” as a co-owner, even if Mr. Weary may not have. Next, the Court concluded from the evidence presented that ABC/Dunhill, Universal Music’s predecessor-in-interest and the party to the 1974 agreement, had exercised its right to renew the agreement and properly notified Shepherd and Weary.



Finally, the Court concluded that the 1974 agreement transferred the right to license “Grateful” as Universal had done: “[The] Agreements terms could not be more clear: Shepherd was selling in its totality her interest in the musical works created during the term of that Agreement”

In the end, the Court determined that “3 Kings” did not infringe Shepherd and Weary’s rights in “Grateful,” because Shepherd and Weary had sold co-ownership rights in the song. It therefore granted the Defendants’ motion, a result that was surely a rapper’s delight.

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