

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONNA CORBELLO,

Plaintiff,

vs.

THOMAS GAETANO DEVITO et al.,

Defendants.

2:08-cv-00867-RCJ-PAL

ORDER

Plaintiff Donna Corbello is the widow and heir of Rex Woodard, who assisted Defendant Thomas Gaetano “Tommy” DeVito in writing his unpublished autobiography (the “Work”). Plaintiff alleges that DeVito and others wrongfully appropriated the Work to develop the screenplay for *Jersey Boys*, a hit musical based on the band The Four Seasons that has played in the United States, Canada, England, and Australia. Corbello has sued several companies and individuals for copyright infringement, and she has sued DeVito for an accounting and under several state law causes of action. The Court granted summary judgment to certain Defendants and certified the order for immediate appeal. The Court of Appeals reversed and remanded for further proceedings. At the close of Plaintiff’s evidence, Defendants orally moved for judgment as a matter of law under Rule 50(a) on all issues, and the Court orally granted the motion in part and denied it in part. This written order follows.

1 If a party has been fully heard on an issue during a jury trial and the court
2 finds that a reasonable jury would not have a legally sufficient evidentiary basis to
3 find for the party on that issue, the court may . . . resolve the issue against the party
4 . . . and . . . grant a motion for judgment as a matter of law against the party on a
5 claim or defense that, under the controlling law, can be maintained or defeated only
6 with a favorable finding on that issue.

7 Fed. R. Civ. P. 50(a)(1)(A)–(B). The Court finds that sufficient evidence has been presented at
8 trial of infringement for the jury to determine the question of infringement generally. The Court
9 also finds that the defenses of implied license and fair use must be determined by the jury. The
10 Court finds, however, that sufficient evidence has not been presented at trial for a reasonable jury
11 to find infringement by Defendants Valli or Gaudio or willful infringement by any Defendant.

12 As to Valli and Gaudio, the evidence at trial was unrebutted that neither of them ever
13 even saw the copyrighted Work until their depositions in this case. Plaintiff argued that Charles
14 Alexander had testified (by deposition) that he had discussed the Work with Gaudio in a July
15 2005 interview before the Broadway premier of *Jersey Boys* in November 2005. The transcript
16 of the interview was admitted as Exhibit 183A. The Court reviewed the transcript with counsel
17 on the record. It indicated that Gaudio was aware that DeVito had employed a “ghostwriter” to
18 help him write a “[b]ook or something” and that he had sent it to Defendants Brickman and
19 Elice. But there was no evidence from Alexander (or any other witness) that Gaudio (much less
20 Valli) was ever aware that Brickman or Elice copied from that “book or something” to create the
21 script for *Jersey Boys*, nor that Valli or Gaudio had the ability to exercise any control over that
22 activity. As discussed on the record the following morning, although infringement does not
23 require a willful intent to violate a copyright as required for enhanced damages, it still requires
24 an intent to copy even if the copier does not realize that the copying violates a copyright. There
was no evidence adduced at trial indicating that Valli or Gaudio knew that the writers had copied
from the Work in creating *Jersey Boys*.

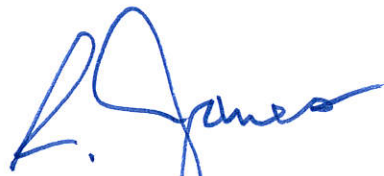
1 As to willful infringement, there was no evidence adduced at trial that any Defendant
2 knew of or recklessly disregarded the possibility that any copying from the Work infringed a
3 copyright. Tommy DeVito's failure to object to any portion of the *Jersey Boys* script that may
4 have been copied from the Work either before or after public performances began, after having
5 given access to the Work for the purpose of helping write the script, not only strongly implies a
6 license (a separate issue) but also obviates any claim that Brickman, Elice, or McAnuff (the
7 Defendants who allegedly actually copied from the Work) had reason to believe that any copying
8 was wrongful.

9 **CONCLUSION**

10 IT IS HEREBY ORDERED that Defendants Frankie Valli and Robert Gaudio are entitled
11 to judgment as a matter of law against the claims of copyright infringement, and all Defendants
12 are entitled to judgment as a matter of law against enhanced damages for willful copyright
13 infringement.

14 IT IS SO ORDERED.

15 Dated this 17th day of November, 2016.

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19 ROBERT C. JONES
20 United States District Judge
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