

Party's Financial Resources Can Significantly Impact Attorney's Fees Award

Whyte Monkee Prods., LLC v. Netflix, Inc., No. CIV-20-933-D, 2022 WL 4775905 (W.D. Okla. Sept. 30, 2022)

By: Lisa Holubar & Anthony Hao | October 31, 2022

On September 30, 2022, Chief Judge DeGuisti of Western District of Oklahoma granted-in-part and denied-in-part defendants Netflix, Inc. and Royal Goode Productions, LLC's motion for attorney's fees as prevailing parties in a copyright infringement suit. The court significantly reduced the awarded amount, finding that the amount sought by defendants "exceed[ed] that which is reasonable and equitable, given the specific circumstances of this case." Plaintiffs Whyte Monkee Productions, LLC and Timothy Sepi brought a copyright infringement action against defendants, alleging they unlawfully used clips from several videos plaintiffs claimed to own in the hit documentary series "Tiger King." Defendants won summary judgment when the court found that several of the copyrights at issue were not owned by plaintiffs and defendants' use of the one copyright owned by plaintiff was protected fair use. Defendants then moved for an award of attorney's fees in the amount of \$170,705 as the prevailing party under the Copyright Act. Notably, that amount was "only a fraction of the total fees incurred and reflected a reduced hourly rate" for defendants' two lead attorneys.

Granting-in-part and denying-in-part the defendants' motion, the court first found that plaintiffs relied on sham testimony to support their copyright ownership claim, indicating their claim was lacking in factual support and objectively unreasonable. Specifically, when giving deposition testimony in this suit, plaintiff Sepi first affirmed his prior testimony in an unrelated proceeding in which he testified that he performed videography work as part of his employment. Then later in this suit, Sepi denied his prior testimony and claimed that he had previously committed perjury. No explanation was given for Sepi's change in testimony. The court next noted that with respect to the one copyright plaintiffs owned, all of the fair use factors tipped decidedly in defendants' favor. Finally, the court discussed both the goals of awarding attorney fees as well as considering the relative financial strength of the parties when making such awards. The court agreed with the defendants' arguments that, in this case, considerations of deterrence and compensation warrant an attorney fee award because defendants were required to spend significant time and financial resources litigating an objectively unreasonable lawsuit, and other potential plaintiffs need to be deterred from relying on sham testimony to advance unfounded claims. However, the court also recognized the need to consider whether a proposed attorney fee award is excessive in light of the plaintiffs' resources. In view of the fact that Sepi's estimated monthly expenses were \$1,850 with a monthly income of \$2,000, the court reduced the award amount from the requested \$170,705 to \$35,000, finding that lesser amount "sufficient to deter the pursuit of objectively unreasonable claims but will avoid imposing 'an inequitable burden on an impecunious plaintiff.'"