

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

OSAMA AHMED FAHMY,
Plaintiff-Appellant,

v.

JAY-Z, AKA Shawn Carter;
TIMOTHY MOSELY, FKA Timbaland;
KYAMBO JOSHUA; ROB BOURDON;
BRAD DELSON; MIKE SHINODA;
DAVE FARRELL; JOSEPH HAHN;
CHESTER BENNINGTON; BIG BAD MR
HAHN MUSIC; CHESTERCHAZ
PUBLISHING; EMI BLACKWOOD
MUSIC, INC.; EMI MUSIC
PUBLISHING LTD.; KENJI KOBAYASHI
MUSIC; LIL LULU PUBLISHING;
MACHINE SHOP RECORDINGS, LLC;
MARCY PROJECTS PRODUCTIONS II,
INC.; MTV NETWORKS ENTERPRISE,
INC.; NONDISCLOSURE AGREEMENT
MUSIC; PARAMOUNT HOME
ENTERTAINMENT, INC.; PARAMOUNT
PICTURES CORPORATION; RADICAL
MEDIA; ROB BOURDON MUSIC; ROC-
A-FELLA RECORDS, LLC;
TIMBALAND PRODUCTIONS, INC.;
UMG RECORDINGS, INC.; UNIVERSAL
MUSIC AND VIDEO DISTRIBUTION,
INC.; WARNER MUSIC, INC.,
Defendants-Appellees.

No. 16-55213

D.C.
No. 2:07-cv-
05715-CAS-
PJW

AMENDED
OPINION

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Argued and Submitted December 8, 2017
Pasadena, California

Filed May 31, 2018
Amended November 1, 2018

Before: Carlos T. Bea, Consuelo M. Callahan,
and Paul R. Kelly,* Circuit Judges.

Opinion by Judge Bea

*The Honorable Paul J. Kelly, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

SUMMARY**

Copyright

The panel affirmed the district court's grant of judgment as a matter of law in favor of rapper Jay-Z and other defendants on copyright infringement claims brought by the heir to Egyptian composer Baligh Hamdy's copyright in a 1957 arrangement of the song *Khosara*.

Jay-Z used a sample from the arrangement in the background music to his hit single *Big Pimpin'*.

The district court held that the heir, Osama Ahmed Fahmy, lacked standing to bring the copyright claims. First, the district court held that Egyptian law recognizes a transferable right of "adaptation," such that when Fahmy transferred "all" of his economic rights to Mohsen Mohammed Jaber in a 2002 agreement, the transfer included the right to create derivative works adapted from *Khosara*. The district court concluded that the right of adaptation is an economic right under Egyptian law, not an inalienable moral right. Second, the district court held that the conveyance of rights contained in the 2002 agreement complied with the requirements of Article 149, the Egyptian law governing the transfer of economic rights. Accordingly, the 2002 agreement successfully conveyed a right of adaptation of *Khosara* to Jaber. Third, a reservation of rights found at the end of the 2002 agreement referred to the right to receive

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royalties, and thus did not confer standing on Fahmy to bring a claim of copyright infringement.

Affirming, the panel concluded (1) that Egyptian law recognizes a transferable economic right to prepare derivative works; (2) that the moral rights Fahmy retained by operation of Egyptian law were not enforceable in U.S. federal court; and (3) that, even if they were, Fahmy had not complied with the compensation requirement of Egyptian law, which did not provide for his requested money damages, and which provided for only injunctive relief from an Egyptian court. The panel held that the district court properly interpreted the 2002 agreement as conveying to Jaber the economic right to create derivative works. In addition, the fact that Fahmy retained the right to royalties did not give him standing to sue for copyright infringement.

COUNSEL

Keith J. Wesley (argued), Corbin K. Barthold, and Peter W. Ross, Browne George Ross LLP, Los Angeles, California, for Plaintiff-Appellant.

Christine Lepera (argued), Mitchell Silberberg & Knupp LLP, New York, New York; David A. Steinberg, Mitchell Silberberg & Knupp LLP, Los Angeles, California; Andrew H. Bart, Jenner & Block LLP, New York, New York; for Defendants-Appellees.

OPINION

BEA, Circuit Judge:

Days before the turn of the new millennium, rapper Jay-Z released an album containing his soon-to-be hit single *Big Pimpin'*. The background music to that track used a sample from a 1957 arrangement by Egyptian composer Baligh Hamdy. Today, we are faced with the question whether the heir to Hamdy's copyright (Appellant Fahmy) may sue Jay-Z for infringement based solely on the fact that Egyptian law recognizes an inalienable "moral right" of the author to object to offensive uses of a copyrighted work. We hold that he cannot.

I

A

In 1957, Baligh Hamdy composed the music to the song *Khosara* for the Egyptian movie *Fata Ahlami*. The song quickly became popular in Egypt. In 1968, Hamdy agreed to transfer certain license and distribution rights to an Egyptian recording company, Sout el Phan.¹ When Hamdy died in 1993, his heirs inherited whatever rights he retained in *Khosara*. Appellant Osama Ahmed Fahmy ("Fahmy") is one of these heirs.

In August 1995, Hamdy's heirs, including Fahmy, who acted as the heirs' representative, executed another agreement with Sout el Phan, confirming the continuing

¹ The agreement was written in Arabic. A certified translation can be found in the record.

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