

Exhibit

A

Stevens v. CoreLogic, Inc.

United States Court of Appeals for the Ninth Circuit

November 6, 2017, Argued and Submitted, Pasadena, California; August 6, 2018, Filed

No. 16-56089

Reporter

899 F.3d 666 *; 2018 U.S. App. LEXIS 21732 **

ROBERT STEVENS; STEVEN VANDEL, individually and on behalf of all others similarly situated, Plaintiffs-Appellants, v. CORELOGIC, INC., a Delaware Corporation, Defendant-Appellee.

Prior History: [**1] Appeal from the United States District Court for the Southern District of California. D.C. No. 3:14-cv-01158-BAS-JLB. Cynthia A. Bashant, District Judge, Presiding.

Stevens v. CoreLogic, Inc., 893 F.3d 648, 2018 U.S. App. LEXIS 16620 (9th Cir. Cal., June 20, 2018)

Disposition: AFFIRMED.

Core Terms

Photographers, metadata, software, infringement, discovery, district court, documents, conceal, induce, parties, summary judgment, alteration, removal, images, costs, motion to compel, provides, summary judgment motion, digital, copies, notice, real estate, declaration, distribute, additional discovery, real estate agent, copyright owner, privilege log, mental state, witness fees

Case Summary

Overview

HOLDINGS: [1]-The dispute was limited to metadata; [2]-The photographers had not plausibly stated a claim under 17 U.S.C.S. § 1202(b)(2) different from their claim under § 1202(b)(3); [3]-They had not offered any evidence to satisfy the mental state requirement in § 1202(b)(1) and (3); [4]-They did not need to show that any specific infringement has already occurred; [5]-The photographers had not offered any specific evidence that removal of copyright management information metadata from their real estate photographs would impair their policing of infringement; [6]-They had not brought forward any evidence indicating that the alleged infringer's distribution of real estate photographs ever induced, enabled, facilitated, or concealed any particular act of infringement by anyone; [7]-The district court properly

denied their request for additional discovery.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

HN1 [📄] Standards of Review, De Novo Review

An appellate court reviews de novo a district court's decision to grant summary judgment.

Copyright Law > Copyright Infringement
Actions > Digital Millennium Copyright Act > Prohibited Conduct

HN2 [📄] Digital Millennium Copyright Act, Prohibited Conduct

17 U.S.C.S. § 1202(b)(1) provides no person shall, without the authority of the copyright owner or the law, intentionally remove or alter any copyright management information knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright. Section 1202(b)(3) provides no person shall, without the authority of the copyright owner or the law, distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright.

Both provisions thus require the defendant to possess the mental state of knowing, or having a reasonable basis to know, that his actions will induce, enable, facilitate, or conceal" infringement.

Copyright Law > Copyright Infringement
Actions > Digital Millennium Copyright Act > Prohibited Conduct

HN3 **Digital Millennium Copyright Act, Prohibited Conduct**

17 U.S.C.S. § 1202(b)(2) refers to the distribution or import for distribution of copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law.

Governments > Legislation > Interpretation

HN4 **Legislation, Interpretation**

It is a fundamental principle of statutory interpretation that a court must give effect, if possible, to every clause and word of a statute so that no part will be inoperative or superfluous, void or insignificant.

Copyright Law > Copyright Infringement
Actions > Digital Millennium Copyright Act > Prohibited Conduct

HN5 **Digital Millennium Copyright Act, Prohibited Conduct**

To avoid superfluity, the mental state requirement in 17 U.S.C.S. § 1202(b) must have a more specific application than the universal possibility of encouraging infringement; specific allegations as to how identifiable infringements will be affected are necessary.

Copyright Law > Copyright Infringement
Actions > Digital Millennium Copyright Act > Prohibited Conduct

Evidence > Burdens of Proof > Allocation

HN6 **Digital Millennium Copyright Act, Prohibited**

Conduct

Statutes requiring knowledge that a future action will occur do not require knowledge in the sense of certainty as to a future act. Rather, knowledge in the context of such statutes signifies a state of mind in which the knower is familiar with a pattern of conduct or aware of an established modus operandi that will in the future cause a person to engage in a certain act. A plaintiff bringing a 17 U.S.C.S. § 1202(b) claim must make an affirmative showing, such as by demonstrating a past pattern of conduct or modus operandi, that the defendant was aware or had reasonable grounds to be aware of the probable future impact of its actions.

Copyright Law > Copyright Infringement
Actions > Digital Millennium Copyright Act

Evidence > Burdens of Proof > Allocation

HN7 **Copyright Infringement Actions, Digital Millennium Copyright Act**

to satisfy the knowledge requirement, a plaintiff bringing a 17 U.S.C.S. § 1202(b)(1) claim must offer more than a bare assertion that when copyright management information (CMI) metadata is removed, copyright infringement plaintiffs lose an important method of identifying a photo as infringing. Instead, the plaintiff must provide evidence from which one can infer that future infringement is likely, albeit not certain, to occur as a result of the removal or alteration of CMI.

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

HN8 **Opposing Materials, Motions for Additional Discovery**

The United States Court of Appeals for the Ninth Circuit treats a district court's failure specifically to address a Fed. R. Civ. P. 56(d) request as an implicit denial.

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

HN9 **Opposing Materials, Motions for Additional Discovery**

Fed. R. Civ. P. 56(d) provides if a nonmovant shows by

present facts essential to justify its opposition to a motion for summary judgment, the court may: (1) defer considering the motion or deny it, (2) allow time to obtain affidavits or declarations or to take discovery, or (3) issue any other appropriate order.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

Civil Procedure > Discovery & Disclosure > Disclosure > Motions to Compel

HN10 **Standards of Review, Abuse of Discretion**

District court discovery rulings denying a motion to compel discovery are ordinarily reviewed for abuse of discretion. When the district court denies a motion to compel additional discovery as moot without considering its merits, however, the district court does not exercise any substantive discretion about the scope of discovery, so an appellate court reviews the denial of discovery de novo.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

HN11 **Standards of Review, De Novo Review**

If a district court implicitly denies a Fed. R. Civ. P. 56(d) motion by granting summary judgment without expressly addressing the motion, that omission constitutes a failure to exercise its discretion with respect to the discovery motion, and the denial is reviewed de novo. The United States Court of Appeals for the Ninth Circuit has previously allowed that explanations for denials of Rule 56(d) request need not be explicitly stated when the information sought would not have shed light on any of the issues upon which the summary judgment decision was based. But when the plaintiff requests additional discovery pursuant to Rule 56(d) and the materials that a motion to compel sought to elicit are relevant to the basis for the summary judgment ruling, district courts should provide reasons for denying the discovery motion and the

Rule 56(d) request.

Civil Procedure > Discovery & Disclosure > Discovery > Relevance of Discoverable Information

HN12 **Discovery, Relevance of Discoverable Information**

Rule 26(b)(1) provides unless otherwise limited by court order, parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(1).

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

Evidence > Burdens of Proof > Allocation

HN13 **Opposing Materials, Motions for Additional Discovery**

Fed. R. Civ. P. 56(d) provides a device for litigants to avoid summary judgment when they have not had sufficient time to develop affirmative evidence. A party seeking additional discovery under Rule 56(d) must explain what further discovery would reveal that is essential to justify its opposition to the motion for summary judgment. That showing cannot, of course, predict with accuracy precisely what further discovery will reveal; the whole point of discovery is to learn what a party does not know or, without further information, cannot prove.

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

Evidence > Burdens of Proof > Allocation

HN14 **Opposing Materials, Motions for Additional Discovery**

Fed. R. Civ. P. 26(b) advisory committee's note to 1946

broad search for facts or any other matters which may aid a party in the preparation or presentation of his case. But for purposes of a Fed. R. Civ. P. 56(d) request, the evidence sought must be more than the object of pure speculation. A party seeking to delay summary judgment for further discovery must state what other specific evidence it hopes to discover and the relevance of that evidence to its claims. In particular, the requesting party must show that: (1) it has set forth in affidavit form the specific facts it hopes to elicit from further discovery, (2) the facts sought exist, and (3) the sought-after facts are essential to oppose summary judgment.

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

HN15 [↓] **Opposing Materials, Motions for Additional Discovery**

A request at that level of generality is insufficient for Fed. R. Civ. P. 56(d) purposes.

Civil Procedure > ... > Costs & Attorney Fees > Costs > Costs Recoverable

HN16 [↓] **Costs, Costs Recoverable**

Fed. R. Civ. P. 54 permits prevailing parties to recover costs other than attorney's fees, unless otherwise provided. Fed. R. Civ. P. 54(d)(1).

Civil Procedure > ... > Costs > Costs Recoverable > Witnesses

HN17 [↓] **Costs Recoverable, Witnesses**

28 U.S.C.S. § 1821 governs the attendance fees for witnesses.

Civil Procedure > ... > Costs > Costs Recoverable > Witnesses

HN18 [↓] **Costs Recoverable, Witnesses**

As a general rule, parties may not recover witness fees for their own attendance. The expenses of corporate directors or officers may, however, be taxable, even when those individuals are testifying on behalf of a corporate party to the suit. provided no recovery is sought from the officers

individually.

Civil Procedure > ... > Costs & Attorney Fees > Costs > Costs Recoverable

HN19 [↓] **Costs, Costs Recoverable**

The allowance or disallowance of items of costs is determined by statute, rule, order, usage, and practice of the instant court.

Civil Procedure > ... > Costs > Costs Recoverable > Witnesses

HN20 [↓] **Costs Recoverable, Witnesses**

S.D. Cal. Civ. R. 54.1(b)(4)(c) specifically provides that witness fees for officers and employees of a corporation may be recoverable as costs if they are not parties in their individual capacities.

Civil Procedure > ... > Discovery > Methods of Discovery > Depositions

HN21 [↓] **Methods of Discovery, Depositions**

A Fed. R. Civ. P. 30(b)(6) deposition is "treated as a single deposition even though more than one person may be designated to testify. Fed. R. Civ. P. 30(a) advisory committee's note to 1993 amendment.

Summary:

SUMMARY**

Copyright Law

The panel filed: (1) an order denying a petition for panel rehearing, rejecting on behalf of the court a petition for rehearing en banc, and amending an opinion; and (2) an amended opinion in a copyright case.

In its amended opinion, the panel affirmed the district court's grant of summary judgment in favor of CoreLogic, Inc., on professional real estate photographers' claims that CoreLogic removed copyright management information from their

**This summary constitutes no part of the opinion of the court. It has

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.