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OPINION OF THE ELEVENTH CIRCUIT
(JUNE 20, 2019)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MIMI KORMAN,

Plaintiff-Appellant,

v.

JULIO IGLESIAS,

Defendant-Appellee.

No. 18-13772

D.C. Docket No. 1:18-cv-21028-KMW

Appeal from the United States District Court
for the Southern District of Florida

Before: MARTIN, NEWSOM, and
BRANCH, Circuit Judges.

PER CURIAM:

This is not the first lawsuit that Mimi Korman has filed against Julio Iglesias over his 1978 song "Me Olvidé de Vivir."

In 1990, Korman's first federal suit sought damages in tort for Iglesias's theft of the song. She alleged that she co-authored with the song with him but he never paid her share of the royalties from it.

In that litigation, Korman gave a deposition detailing the collaborative process by which she and Iglesias had co-written the song, as well as a sworn affidavit to that effect. The district court accepted as true Korman's assertion of co-authorship but rejected her tort claims as time-barred by the statute of limitations. *Korman v. Iglesias*, 825 F. Supp. 1010, 1016-17 (S.D. Fla. 1993), *aff'd*, 43 F.3d 678 (11th Cir. 1994) (mem.).

In the present action, a copyright suit,[1] Korman has changed her tune. She now alleges that "Korman alone authored the Work." Compl. ¶ 11. Following Iglesias's motion to dismiss, the district court took judicial notice of the court orders and Korman's deposition and affidavit in the earlier litigation. The court found that judicial estoppel barred her new claim because Korman had previously asserted that she is the co-author, not the sole author, of the song.[2] Although Korman responded that her earlier position was a mistake based on Iglesias's fraudulent

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[1] The Copyright Act's three-year statute of limitations restarts each time a work is republished. *See Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 671 (2014) (citing 17 U.S.C. § 507(b).

[2] These facts matter because the Copyright Act considers a "joint work" an inseparable "unitary whole," 17 U.S.C. § 101, and authors of a joint work "are coowners of copyright in the work," *id.* § 201(a). Each joint author therefore "automatically acquires an undivided ownership in the entire work." 1 *Nimmer on Copyright* § 6.03 (2018). As a result, "an action for infringement between joint owners will not lie because an individual cannot infringe his own copyright." *Weissmann v. Freeman*, 868 F.2d 1313, 1318 (2d Cir. 1989).

representations and her counsel's advice, the district court dismissed the copyright claim with prejudice.[3]

We review a district court's decision to apply judicial estoppel for an abuse of discretion. *Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1180 n.4 (11th Cir. 2017) (en banc). Judicial estoppel is an equitable doctrine intended to protect the integrity of the courts from "parties who seek to manipulate the judicial process by changing their legal positions to suit the exigencies of the moment." *Id.* at 1176. The rule of judicial estoppel is that, "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis v. Wakelee*, 156 U.S. 680, 689 (1895). Judicial estoppel may be applied when the plaintiff "took a position under oath in the [prior] proceeding that was inconsistent with the plaintiff's pursuit of the [present] lawsuit" and she thus "intended to make a mockery of the judicial system." *Slater*, 871 F.3d at 1180. We typically also consider whether the inconsistency is clear, whether the party had success in persuading the earlier court to accept the position, and whether an unfair advantage or detriment would accrue in the present litigation if not estopped. *Id.* at 1181 (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)).

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[3] Korman also alleged a claim under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*, which the district court dismissed without prejudice. Korman has filed this appeal rather than amending her complaint, and she raises no FDUTPA issues on appeal.

Korman challenges the application of judicial estoppel to her copyright claim on three main grounds. First, she argues that a court may not make a finding of intent "to make a mockery of the judicial system" without discovery, citing various nonprecedential decisions. We disagree. Though there may be instances in which the plaintiff's intent is not clear from the pleadings, this is not one of them. The clear assertion of sole authorship on the face of Korman's complaint, in light of her previous allegations, is the epitome of "'the old sporting theory of justice' or the use of the federal courts as a forum for testing alternate legal theories *seriatim*." *Fla. Evergreen Foliage v. E.I. DuPont de Nemours & Co.*, 470 F.3d 1036, 1042 (11th Cir. 2006). Her affirmative change of position plainly reflects "cold manipulation and not an unthinking or confused blunder." *Slater*, 871 F.3d at 1181 (quoting *Johnson Serv. Co. v. Transamerica Ins. Co.*, 485 F.2d 164, 175 (5th Cir. 1973)).

Second, Korman argues that considering her 1992 deposition and 1993 affidavit was improper without converting Iglesias's motion to dismiss into a motion for summary judgment and entering those documents into evidence. *See* Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.") We disagree. Our Court has articulated an exception to Rule 12(d)'s conversion provision when considering materials attached to a motion to dismiss that are both central to the plaintiff's claim and undisputed. *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). Korman's earlier statements on the subject of the authorship of the song

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