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APPENDIX A

FOR PUBLICATION

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

**Nos. 19-16913
19-17024**

D.C. No. 5:13-cv-05957-EJD

[Filed: July 13, 2022]

VINCENT SICRE DE FONTBRUNE; LOAN)
SICRE DE FONTBRUNE; ADEL SICRE)
DE FONTBRUNE; ANAIS SICRE DE FONTBRUNE,)
in their capacity as personal representatives)
of the Estate of YVES SICRE DE FONTBRUNE,)
<i>Plaintiffs-Appellants/</i>)
<i>Cross-Appellees,</i>)
)
v.)
)
ALAN WOFYSY; ALAN WOFYSY & ASSOCIATES,)
<i>Defendants-Appellees/</i>)
<i>Cross-Appellants.</i>)

OPINION

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

App. 2

Argued and Submitted February 8, 2022
San Francisco, California

Filed July 13, 2022

Before: Andrew D. Hurwitz and Lawrence VanDyke,
Circuit Judges, and Joan N. Ericksen,^{*} District
Judge.

Opinion by Judge Ericksen

SUMMARY^{**}

Foreign Judgments

The panel reversed the district court's summary judgment entered for defendants Alan Wofsy and Alan Wofsy & Associates (collectively "Wofsy") in an action brought by Yves Sicre de Fontbrune in California state court seeking recognition of a French money judgment.

The photographer Christian Zervos created the *Zervos Catalogue* of the works of Pablo Picasso, which was originally published under the label of *Cahiers d'Art*. In 1979, Sicre de Fontbrune acquired the rights for the business capital of *Cahiers d'Art*. Wofsy produced a series of books, titled "*The Picasso Project*," that contained reproductions of photographs from the *Zervos Catalogue*.

^{*} The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota, sitting by designation.

^{**} This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

App. 3

The French judgment found that Wofsy had violated an *astreinte* – a French legal device that imposed money damages for the continued use of copyrighted photographs of Pablo Picasso’s works. Sicre de Fontbrune had obtained that *astreinte* as a form of relief in a 2001 French judgment finding that the photographs’ copyrights were infringed. The district court granted summary judgment for Wofsy based on a defense to recognition under California’s Uniform Foreign-Country Money Judgment Recognition Act, Cal. Civ. Proc. Code §§ 1713-1725, namely, the defense that the French judgment was repugnant to United States public policy protecting free expression.

The panel held that in international diversity cases, such as this one, the enforceability of foreign judgments is generally governed by the law of the state in which enforcement is sought; and the California Recognition Act governed. The Recognition Act lists several grounds for nonrecognition. Five statutory grounds for nonrecognition of the French judgment are at issue in this appeal.

First, Sicre de Fontbrune challenged the district court’s conclusion that the French judgment was repugnant to United States public policy favoring free expression. The fair use defense to copyright infringement is one of the built-in First Amendment accommodations that ease the tension between free expression and U.S. copyright law. As part of its public policy defense, Wofsy asserted that the fair use doctrine of U.S. copyright law – a feature that France’s copyright scheme lacked – would have protected the copying of the photographs at issue. The panel rejected

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