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United States Court of Appeals For the Ninth Circuit

No. 16-56057; 16-56287

SKIDMORE ET AL.

Michael Skidmore, Trustee for the Randy Craig Wolfe Trust Plaintiff-Appellant/Cross Appellee

V

LED ZEPPELIN ET AL.

Defendants-Appellees

and

WARNER/CHAPPELL MUSIC, INC.

Defendant, Cross Appellant

SKIDMORE'S COMBINED REPLY BRIEF AND OPENING BRIEF RESPONDING TO DEFENDANT'S COSTS AND FEES APPEAL

(Music copyright infringement, on appeal from the final Order dated June 23, 2016 of the Honorable R. Gary Klausner, of the United States District Court for the Central District of California. The case was docketed in the Central District at 15-cv-03462)

FRANCIS ALEXANDER, LLC

Francis Malofiy, Esquire
Alfred Joseph Fluehr, Esquire
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000

F: (215) 500-1005

Law Firm / Lawyer for Michael Skidmore



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1.		1909 Copyright Act and the Case Law Do Not Limit the Scope Musical Copyright's Composition to Written Sheet Music	
	a.	Plaintiff's Opening Argument and Defendants' Response	
	b.	Plaintiff's Reply on Why Recordings of a Song May Be Used to Establish the Composition of Songs and Why The 1909 Copyright Act Does Not Limit the Protected Composition of a Song to Sheet Music	
		 Defendants' Response Fails to Explain why Recordings of a Song Cannot be Used to Establish the Composition of the Song Under the 1909 Act	
		ii. Plaintiff Has Clearly Shown Why Sections 11-12 Do Not Control or Define the Scope of Protected Expression in a Musical Composition	
	c.	The Ninth Circuit and Sixth Circuit Have Previously Ruled That Album Recordings May Be Used to Establish the Composition of a Song Copyrighted under the 1909 Act	
	d.	Plaintiff and Future Litigants Will Suffer Severe Consequences if the Lower Court's Decision Restricting the Substantial Similarity Comparison is Affirmed	
2.	Test was	Court Should have Permitted Plaintiff to Present Expert timony that the Composition in the "Taurus" Album Recording Embodied in the Deposit Sheet Music Composition of turus", as the Plaintiff was Allowed to Do in Williams	
3.	Plaintiff Demonstrated in His Opening Brief Through Expert Testimony, Expert Reports, and Audio Exhibits that the Album Composition of "Taurus" was "Identical" to "Stairway to Heaven" Wherea the Deposit Copy was Merely "Substantially Similar"		
4.		ntiff Has Never Attempted to Claim a Sound Recording yright Exists or was Copied; Defendants' Argument to the	



	Contrary is Nonsensical
5.	Plaintiff Proved a High Degree of Access at Trial and Requested an Inverse Ratio Rule Instruction; The Lower Court Erroneously Refused to Give the Instruction and Caused Plaintiff Severe Prejudice
	a. The Jury Found that Defendants had Access to "Taurus" Because Plaintiff Proved a High Degree of Access with both Direct and Circumstantial Evidence
	b. There is No Case Which Limits the Applicability of an Inverse Ratio Rule Jury Instruction to Cases with "High Degrees" of Access
6.	Plaintiff Explicitly Complied with Central District L.R. 51, the Prescribed Method for Preserving Exceptions to Jury Instructions, and the Trial Court Acknowledged that All Exceptions and Objections were Preserved; Defendants' Argument that Plaintiff Waived these Objections is Disingenuous
7.	Plaintiff Did Not Waive Any Claim of Error Regarding the Court's Failure to Instruct the Jury that Combinations and Arrangements of Musical Elements are Copyrightable; This Erroneous Omission was Highly Prejudicial
8.	The Originality Instruction Given by the Court was Inadequate, Not Legally Correct, and Severely Harmed Plaintiff's Case; Plaintiff Did Not Waive this Objection as Defendants Erroneously Claim
	a. Plaintiff Suffered Severe Harm Due to the Incorrect Instruction on Originality
	b. Plaintiff Did Not Waive any Objection to the Erroneous Originality Instruction and In Fact Explicitly Preserved that Objection in Writing
9.	During Jury Deliberations the Jury's Final Question was to Hear Plaintiff's Audio of "Taurus"—The Court Ordered An Irrelevant Version of "Taurus" To Be Played, Which Seriously Prejudiced Plaintiff By Ending the Case; Plaintiff Specifically Objected and Did Not Waive this Error
10.	The Ten-Hour Time Limit Placed on Plaintiff Severely Hindered His Ability to Prove Substantial Similarity and Abused the Court's Discretion: This Objection was Explicitly Preserved and Not Waived



11.	Dr. Lawrence Ferrara's Testimony Should Have Been Precluded for Failing to Disclose that He Had Been Previously Hired by Plaintiff's Publisher to Compare "Taurus" and "Stairway to Heaven"
	PLAINTIFF'S RESPONSE BRIEF TO DEFENDANT'S ND FEES APPEAL
1.	Defendant Erroneously and Disingenuously Claims the Trial Court Failed to Consider the Purpose of the Copyright Act when Denying
	their Costs and Fees Motion
2.	The District Court's Opinion was Correct and Did Not Abuse Its Discretion
3.	Defendants Spuriously Argue that the Trial Court Erred Because, In their Mind, the Musical Expression in "Taurus" was Unprotected and the Lawsuit was Unreasonable; This Argument Fails Because Defendants Failed to Preserve this Claim of Error and are Improperly Asking this Circuit to Resolve a Dispute of Fact between Musical Experts
	a. The Court Properly Found that there was a Dispute of Fact Between the Opposing Experts Over the Protectability of "Taurus" and its Substantial Similarity to "Stairway to Heaven"
	b. Defendants Ignore that There Were Novel Issues of Law At Play Which Precluded a Finding that Plaintiff's Lawsuit was Unreasonable or Frivolous
	c. Defendant Waived any Reasonableness/Frivolousness Argument by Failing to Appeal the Underlying Rulings, Failing to Develop this Point in the Costs and Fees Motion, and By Failing to Develop this Argument in its Opening Brief 75
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