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Copyright Litigation

**Melanie Howard
and Mariah Volk**

In *Safinia v. Voltage Pictures*, USDC, C.D. California, March 20, 2019, the district court granted summary judgment, and dismissed copyright infringement claims against entities involved in production of motion picture *The Professor and the Madman*, finding that the rewrite of the original screenplay was work made for hire under terms of Certificate of Authorship.

Background of the Case

Plaintiff, director Farhad Safinia, brought suit against Voltage Pictures, Voltage Productions, LLC, Christchurch Productions DAC, Nicolas Chartier, and Definition Films DAC, alleging infringement of his screenplay, *The Professor and the Madman*.

Safinia was engaged by Airborne Productions, Inc. in 2007 to revise a 2001 screenplay titled *The Professor and the Madman*, adapted from a book of the same name written by Simon Winchester. At that time, Safinia signed a Certificate of Authorship with Airborne, stating that he had been engaged to render writing services on a work-made-for-hire basis in connection with the motion picture project and reserving to Airborne rights to all related work. Voltage offered Safinia a position directing *The Professor and the Madman* in 2014. Two years later, Voltage asked Safinia to rewrite

and shorten the script. On August 21, 2016, Airborne entered into a Quitclaim Agreement, transferring ownership rights to the screenplay to Voltage.

On the parties' cross-motions for summary judgment, the court granted defendants' motion for summary judgment on plaintiff's copyright infringement claim and denied plaintiff's motion for summary judgment on defendants' liability for copyright infringement.

Work for Hire under the Copyright Act

As the court noted, to establish a copyright infringement claim, a plaintiff must show ownership of the copyright in the work at issue, and that the defendants copied protected elements of that work. Additionally, a plaintiff must show registration of the copyright, which raises a rebuttable presumption of copyright validity and ownership. The Copyright Act vests copyright in the author of a work, except in the case of work made for hire, in which case the employer for whom the work is created is considered the author. Unless otherwise expressly agreed upon in writing, the author owns all of the works comprised in the copyright.

The Copyright Act defines a "work made for hire" as "(1) a work prepared by an employee within the

scope of his or her employment; or (2) a work specially ordered or commissioned for use . . . as a part of a motion picture or other audiovisual work, . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire."

Safinia filed for a Certificate of Registration, which issued on Aug. 4, 2017, raising a rebuttable presumption of his ownership and the validity of his copyright. Safinia argued that the COA applied only to the 2007 revisions and did not extend to the 2016 rewrite of *The Professor and the Madman*. In support of his argument, Safinia submitted a declaration by Vicki Christianson, the President of Airborne, stating that "Airborne did not contemplate the COA would cover any additional work performed by Mr. Safinia beyond his 2007 revision."

The court rejected this extrinsic evidence on the basis that the express language of the COA did "not limit its application to only a single rewrite in 2007, nor provide that the COA would not apply to future writings by [p]laintiff...." Accordingly, the court held that "the COA is not 'reasonably susceptible' to the interpretation proffered by [p]laintiff." The court also sustained defendants' objections to Safinia's and Christianson's declarations regarding their uncommunicated, subjective intent as to the COA on the basis that it was irrelevant.

The court also rejected as irrelevant Safinia's contention that because Voltage was not a party to the COA, the COA did not apply to the 2016 rewrite, holding that "even if there is no COA between [p]laintiff and [d]efendants, [p]laintiff does not have ownership

rights in the Screenplay based on the COA between Airborne and [p]laintiff.”

The district court granted defendants’ motion for summary judgment, finding that the 2016

rewrite was a work made for hire, and that because Safinia did not own rights in the screenplay, he lacked standing to assert a copyright infringement claim against defendants.

Melanie Howard is a partner and chair of Loeb & Loeb LLP’s Intellectual Property Protection group. Mariah Volk is an associate in Loeb’s Litigation practice. Both lawyers are based in the law firm’s Los Angeles office.

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