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## Fogerty v. Fantasy, Inc., 114 S.Ct. 1023 (1994)

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### Recommended Citation

Douglas Michaud, *Fogerty v. Fantasy, Inc.*, 114 S.Ct. 1023 (1994), 4 DePaul J. Art, Tech. & Intell. Prop. L. 329 (1994)

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## **Fogerty v. Fantasy, Inc.,**

114 S.Ct. 1023 (1994).

### *Introduction*

Fantasy, Inc. ("Fantasy"), the holder of a copyright for a song, brought an infringement action against John Fogerty ("Fogerty"), the musician who originally wrote the song. After his successful defense of the action, Fogerty moved for attorney's fees pursuant to § 505 of the Copyright Act. The United States District Court for the Northern District of California denied the motion. It held that although prevailing plaintiffs are routinely awarded attorney's fees, prevailing defendants must show that the original suit was frivolous. The United States Court of Appeals for the Ninth Circuit affirmed. The United States Supreme Court reversed and remanded, holding that successful plaintiffs and successful defendants must be treated alike under § 505.

### *Facts*

John Fogerty was the lead singer and songwriter for the musical group "Creedence Clearwater Revival." In 1970, he wrote the song "Run Through The Jungle," and sold the publishing rights to Fantasy, Inc. In 1985, after the group disbanded, Fogerty wrote the song "The Old Man Down the Road." Fantasy, Inc. sued Fogerty for copyright infringement alleging that "The Old Man Down The Road" was merely "Run Through The Jungle" with new words. The jury found in favor of Fogerty.

After defeating the infringement claim, Fogerty moved for reasonable attorney's fees pursuant to § 505 of the Copyright Act.<sup>1</sup> The district court interpreted the language of § 505 to require the application of a "dual standard" to the issue of attorney's fees. Under this standard, prevailing plaintiffs are awarded attorney's fees as a matter of course, but prevailing defendants must show that the original infringement action was frivolous or brought in bad faith. The district court ruled that Fantasy, Inc.'s infringement suit was not brought in bad faith and therefore denied Fogerty's motion. Fogerty appealed.

The court of appeals affirmed the district court's application of the "dual standard." It refused to adopt the "evenhanded approach" followed by other circuit courts. Under the "evenhanded approach," attorney's fees are awarded to successful plaintiffs and successful defendants on the same basis, i.e. the court's discretion. The Supreme Court granted certiorari to settle the conflict among the

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1. "In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U.S.C. § 505.

appellate courts.

### *Legal Analysis*

The issue before the Supreme Court was whether attorneys fees in a copyright infringement action should be awarded according to the dual standard which treats plaintiffs and defendants differently, or the evenhanded approach which treats them the same. The court first examined the language of § 505 which states in relevant part that “. . . the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.” 17 U.S.C. § 505. The court held that on its face, the statute did not indicate that prevailing plaintiffs should be judged by a different standard than prevailing defendants. It then addressed each of the arguments offered by the parties.

Fantasy, Inc. first alleged that a Supreme Court precedent supported the application of the dual standard in the present case. In *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), the Supreme Court examined nearly identical fee-shifting language in Title VII of the Civil Rights Act of 1964. The provision states in relevant part that a court “in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee as part of the costs . . .” 42 U.S.C. § 2000e-5(k). The *Christiansburg* Court held that prevailing plaintiffs should ordinarily recover attorneys fees,<sup>2</sup> but defendants must show that the action was frivolous.<sup>3</sup> Fantasy argued that the nearly identical language of § 505 of the Copyright Act should be interpreted similarly to require a dual standard.

However, the Supreme Court rejected this argument because the legislative history and policy objectives of the Civil Rights Act supported a dual standard, whereas the history and objectives of the Copyright Act did not. The court admitted that the legislative history of the fee-shifting language in the Civil Rights Act was sparse, but pointed out that it did indicate that different standards were to be applied to successful plaintiffs than to successful defendants.<sup>4</sup> By contrast, the legislative history of § 505 of the Copyright Act merely stated that “Under section 505 the awarding of costs and attorney’s fees are left to the court’s discretion . . . .”<sup>5</sup> The court concluded that this provided no support for a dual standard.

The Supreme Court also pointed out that the policy objectives of the two statutory sections were different. It noted that in the civil rights context, plaintiffs generally have fewer resources than defendants for litigation. The court stated that the purpose of the Civil rights fee-shifting statute was to address this imbalance by treating successful plaintiffs more favorably than successful defendants with respect to awarding attorney’s fees. The court noted that by contrast, the financial resources of plaintiffs who sue for copyright infringement vary greatly.

2. 434 U.S. at 418.

3. 434 U.S. at 421.

4. The Supreme Court did not cite to legislative history for this proposition. *Fogerty v. Fantasy, Inc.*, 114 S.Ct. 1023, 1028 (1994).

5. H.R. REP. No. 94-1476, 163 (1976).

They may be individual artists or major corporations, and so there is no imbalance to be redressed by awarding attorney's fees to prevailing plaintiffs and prevailing defendants on different bases. The court concluded that the legislative history and policy objectives of the Civil Rights Act supported a dual standard interpretation, while the history and objectives of the Copyright Act did not. It therefore held that these differences justified reading a dual standard into the Civil Rights Act but not into the Copyright Act.

Fantasy next argued that the dual standard promoted the purposes of the Copyright Act better than the evenhanded approach. It claimed that by routinely awarding attorney's fees to successful plaintiffs, courts would encourage the bringing of meritorious claims of infringement. The court first pointed out that the goal of the Copyright Act is not simply to encourage meritorious infringement actions. Rather, its purpose is to enrich the general public through access to creative works. The court went on to explain that defendants in infringement actions can contribute to the public enrichment as well. They do so by successfully defending their creative works and thereby ensuring that the public will have access to them. The court concluded that the goals of the Copyright Act are also promoted by encouraging defendants to litigate their claims. It therefore rejected Fantasy's argument that the dual standard promoted the purposes of the Copyright Act better.

Fantasy's final argument claimed that when Congress considered revisions to the Copyright Act of 1909, it was aware that the attorney's fees provision<sup>6</sup> was uniformly interpreted to require a dual standard. Fantasy claimed that because Congress carried forth this language into § 505 of the 1976 Act without any changes, that it ratified the different treatment of successful plaintiffs and successful defendants.

Fantasy argued that two studies submitted to Congress during the revision period made legislators aware of the uniform interpretation requiring a dual standard. The first report by W. Strauss<sup>7</sup> concluded that "[t]he cases indicate that this discretion [to award attorney's fees] has been judiciously exercised by the courts."<sup>8</sup> The court held that such a limited discussion of attorneys fees did not constitute an endorsement of a dual standard. The second report by R. Brown<sup>9</sup> concluded that "the likelihood of getting a fee award is so problematic that it is not a factor that goes into the decision to settle or litigate."<sup>10</sup> It also noted that its observations about attorney's fees "deterrent effect on ill-founded litigation, whether by plaintiffs or defendants, is outside the scope of this inquiry."<sup>11</sup>The

6. § 116 of the Copyright Act of 1909.

7. STUDIES PREPARED FOR SUBCOMMITTEE ON PATENTS, TRADEMARKS AND COPYRIGHTS, 86TH CONG., 2D SESS., DAMAGE PROVISIONS OF THE COPYRIGHT LAW 22 (H. Judiciary Comm. Print 1960) (study by W. Strauss) (hereinafter Strauss Study).

8. Strauss Study, p. 31.

9. STUDIES PREPARED FOR SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS, 86TH CONG., 2D SESS., OPERATION OF THE DAMAGE PROVISIONS OF THE COPYRIGHT LAW: AN EXPLORATORY STUDY 23 (H. Judiciary Comm. Print 1960) (Study of R. Brown) (hereinafter Brown study).

10. *Id.* at 85.

11. *Id.* at 85-86.

court concluded that the Brown Study therefore did not advocate awarding attorney's fees to prevailing plaintiffs and prevailing defendants on different bases either. In addition, the court noted that only one pre-1976 case expressly endorsed a dual standard.<sup>12</sup> The court therefore concluded that Congress could not have been aware of, nor could it have ratified a dual interpretation of the attorney's fees provision of the Copyright Act.

The court also addressed Fogerty's claim that § 505 was meant to adopt the "British Rule," thereby automatically awarding attorneys fees to the prevailing party regardless whether it was the plaintiff or defendant. It rejected this argument for two reasons. First, the language of § 505 states that "the court may also award a reasonable attorney's fees to the prevailing party as part of the costs." 17 U.S.C. § 505. The court noted that the word "may" implies that the court is to exercise its discretion. Adopting the "British Rule" would eliminate the court's discretion, and therefore run counter to the language of the statute. Second, the court noted that in the United States parties bear their own attorney's fees unless otherwise provided. The court held that Congress would not depart from the American Rule without more explicit statutory language and legislative comment.

Having rejected the parties arguments for the dual standard and the British Rule, the court held that prevailing plaintiffs and prevailing defendants shall be treated alike. The court therefore adopted the evenhanded approach, under which prevailing parties are awarded attorneys fees only as a matter of the court's discretion. The court reversed the court of appeals adoption of the dual standard and remanded the case so the evenhanded approach could be applied.

Judge Thomas wrote a concurring opinion in which he criticized the Supreme Court's inconsistent interpretation of identical language in Title VII of the Civil Rights Act and § 505 of the Copyright Act. Thomas argued that the fee-shifting language in the Civil Rights Act, which states that "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee . . . as part of the costs . . . ." 42 U.S.C. § 2000e5(k), can only be interpreted to require that prevailing plaintiffs and prevailing defendants be treated the same. He noted that the court did not follow the plain meaning of the language but rather looked to the legislative history and the policy objectives of the Civil Rights Act to give the language an interpretation not clearly intended by Congress. Thomas pointed out that the court's interpretation of the nearly identical language in § 505 of the Copyright Act, by contrast, followed the plain meaning of the language. Nonetheless, Thomas concurred in the judgment because he felt the court's interpretation of the Copyright Act was correct.

### *Conclusion*

The United States Supreme Court held that prevailing plaintiffs and prevailing defendants must be treated alike in awarding attorney's fees under the Copyright Act. It reversed the Ninth Circuit's adoption of the dual standard which awarded

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12. *Breffort v. I Had a Ball Co.*, 271 F.Supp. 623 (S.D.N.Y. 1967).

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attorney's fees to successful plaintiffs as a matter of course, but required successful defendants to show that the original infringement action was frivolous. The court based its decision on the plain language of § 505 and the lack of support for a dual standard in the legislative history and policy objectives of the Act.

*Douglas W. Michaud*

