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Article 11

The Fellowship of Friends, Inc. v. County of Yuba, 1 Cal. Rptr. 2d 284 (Cal. Ct. App. 1991)

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ration would normally be accompanied by the intent on behalf of each participant that his contribution be merged into a unitary whole. Additionally, the court noted that the case law on the subject has read the statutory definition literally, so that intent is required for all works of joint authorship.

The court next considered the issue of whether the contribution of each of the authors must be copyrightable; or rather whether the combined result of both of the authors must be copyrightable in order for each contributor to qualify as a joint author. The court noted that the case law on the subject supported the requirement that each contribution be copyrightable. The court considered that if each separate contribution were required to be copyrightable, spurious claims of joint authorship might be prevented. The court also emphasized the importance of contract law, noting that a person who contributes non-copyrightable materials toward a copyrightable work is free to enter into a contract which would give that person joint ownership of the resulting copyright.

For these reasons, the court held that the separate contribution of each party must be copyrightable in order for joint-authorship to exist.[6] The court recognized that the literal reading of the statute did not support this requirement, and that there were arguments against this view; however, the court emphasized that its decision struck an appropriate balance between copyright and contract law.

Finally, the court addressed the issue of the nature of the intent required under the statutory definition of joint work. The court noted that, under the statutory definition, the relevant state of mind was whether the parties intended that their contributions be merged into a unitary whole. However, the court reasoned that this definition would extend joint-author status to parties who were unlikely to have been within the contemplation of Congress. For example, the court explained that the definition would extend joint author status to parties such as writers and editors. To avoid this result, the court articulated a rule that, in order for joint authorship to exist, all parties must have intended this result.[7] The test the court recognized was whether each party intended to be identified as co-authors.[8]

In applying this rule to the facts, the court noted that there was no evidence that Childress would have accepted crediting the play as being written by Alice Childress and Clarice Taylor. In support of its conclusion, the court emphasized that Childress had rejected all of Taylor's attempts to negotiate a co-ownership agreement. The court affirmed the lower court's conclusion that Childress did not intend that she and Taylor be considered joint authors of the play.[9]

Taylor argued that when the lower court held that Childress did not intend to be a joint author, the lower court misapplied the statutory standard by requiring that Childress intend the legal consequences which flowed from joint authorship. The appellate court rejected this argument, holding that the lower court applied the proper standard which was whether the parties entertained in their minds the concept of joint ownership.[10] Because the court held that Childress lacked the requisite intent for joint authorship, the court affirmed the lower court's decision which granted summary judgment in favor of Childress.[11]

Conclusion

The appellate court held that in order for joint authorship to exist, all parties must have intended this result. In holding that each party's contribution must be independently copyrightable in order to qualify as a joint author under the Copyright Act, the court emphasized the importance of contract law which allows those parties who contribute non-copyrightable material toward a joint effort to protect their rights through contract. Because the court found that Childress did not have the requisite intent for joint authorship, it did not review the lower court's finding that Taylor's contributions were not independently copyrightable. Ω

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1. Copyright Act, 17 U.S.C. § 101 (1988).
2. Lanham Act, 15 U.S.C. §§ 1051, 1125(a) (1988).
3. N.Y. GEN. BUS. LAW § 368-d (McKinney 1984).
4. Copyright Act, 17 U.S.C. § 101 (1988).
5. H.R. Rep. No. 1476, 94th Cong., 2d Sess 120 (1976).
6. Childress v. Taylor, 954 F.2d 500, 507 (2nd Cir. 1991).
7. *Id.* at 508.
8. *Id.*
9. *Id.* at 509.
10. *Id.*
11. *Id.*

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Introduction

The California Court of Appeals affirmed the judgement of the trial court which ruled that a building, Goethe Academy, which was owned by the plaintiff, The Fellowship of Friends, Inc., was not a museum

as contemplated in Article XIII, section 3(d) of the California Constitution[1] and in Section 202(a)(2) of the Revenue and Taxation Code.[2] Under those sections, museums which are free and open to the public are exempt from property taxation. The defendant, the County of Yuba, denied the Fellowship the museum tax exemption for the Academy. The appellate court determined that the plaintiff had failed to establish that the Academy was used principally or significantly as a museum and that the defendant properly denied the exemption.

Facts

The Fellowship is a religious organization which owns property in Yuba County that contains the Goethe Academy building. The Fellowship organization believes in collecting fine art and artifacts for the purposes of changing the viewer's spiritual and emotional state and in preserving the art for future generations. The Fellowship stores its collection of art at the Academy. The Academy building also serves as a residence for the founder and leader of the Fellowship, living quarters for other members of the organization, and a hall for dinners, conferences, lectures, weddings, and concerts.

In 1983, the Fellowship opened the Academy to the public. By appointment, visitors were allowed to enter for free to view the collection. The art was displayed in an area on the first floor which comprised approximately 60% of the total floor space. The academy entertained an average of about 300 guests per year over the tax years 1985-1986, 1986-1987, and 1987-1988. In 1985 the Fellowship applied for a property tax exemption for 63% of its property. The Fellowship claimed that the property was a free public museum under Article XIII, section 3(d) of the California Constitution and section 202(a)(2) of the Revenue and Taxation Code. Yuba denied the exemption and denied similar requests by the Fellowship during the two subsequent tax years.

The Fellowship filed a complaint against Yuba wherein it claimed to be tax exempt as a museum and asked to be reimbursed for the taxes it paid during the three tax years which Yuba denied it tax exempt status. The trial court held that the Fellowship failed to prove that the Academy was used predominantly as a public museum and found for Yuba. The Fellowship appealed the trial court's decision.

Legal Analysis

First, the Fellowship argued that the trial court erred when it construed that a museum, for the purpose of attaining a tax exempt status, was property used "primarily" or "predominantly" as a museum. The appellate court examined the appropriateness of the trial court's definition of museum under the law. The appellate court noted that words used in statutes or constitutional provisions awarding tax exemptions should be strictly construed so that the "concession will not be enlarged nor extended beyond that plain meaning of the language employed."[3] The appellate court then stated that when property is described by its function, that function is assumed to be its primary use.[4] Therefore, the court concluded that since a museum is defined as a building that houses and displays objects of lasting value, the functions of housing and displaying such objects should be the property's primary use.

Second, the Fellowship argued that the trial court erred when it determined that the primary use of the Fellowship's property was not as a museum. The Fellowship claimed that the lower court denied the exemption merely because the Academy was used for multiple purposes. The appellate court reviewed the lower court's analysis and found that the lower court did examine the other functions of the Academy. However, the appellate court found that even though uses of the Academy for other purposes does not, in itself, preclude the award of a tax exemption, evidence of these uses is probative of whether its primary use is that of a museum.[5] The appellate court also found that evidence of the Fellowship's appointment policy for visitors, the remote location of the Academy, the limited hours of operation and the minimal publicity for the building also suggested that the Academy's primary use was not to store and display art.

Third, the Fellowship claimed that the lower court erred when it failed to consider the Academy's function as a collector and repository of art. The Fellowship explained that a museum stores art as well as displays it and that the trial court only examined the use of the Academy for displaying art. The appellate court ruled that the lower court did examine both functions with respect to the Academy. It found that the purpose of the tax exemption was to encourage the display of art and items of value to the public. Therefore, the appellate court found that the use of property to exhibit art is more significant than its use to store it for the purpose of determining whether property constitutes a tax exempt museum.

Conclusion

The appellate court agreed with the lower court's finding that property must store and display objects of value in order to be a museum and that the

property's primary function must be that of a museum in order to be tax exempt. Furthermore, the appellate court affirmed the trial court's decision that the Fellowship did not establish that the primary function of the Academy was that of a museum. Ω

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1. Article XII, sec. 3(d) of the California Constitution, provides: "The following are exempt from property taxation: . . . (d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities." CAL. CONST. ART. XII, § 3(d).

2. Revenue and Taxation Code section 202(a)(2) provides: "The exemption of the following property is as specified in subdivisions (a), (b), (d), and (h) of Section of article XIII of the Constitution, except as otherwise provided in subdivision (a) of Section 11 thereof: . . . (2) Property used for free public libraries and free museums." CAL. REV. & TAX. CODE § 202(a)(2) (West 1992).

3. Honeywell Information Systems, Inc. v. County of Sonoma, 44 Cal.App.3d 23, 27 (1974).

4. The Fellowship of Friends, Inc. v. County of Yuba, 1 Cal.Rptr.2d 284, 286 (Cal. Ct. App. 1991).

5. *Id.* at 288.