



**Morrill v. Smashing Pumpkins 157 F. Supp. 2d 1120 (C.D. Cal.
2001)**

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MORRILL V. SMASHING PUMPKINS

157 F. Supp. 2d 1120 (C.D. Cal. 2001).

I. INTRODUCTION

Jonathon Morrill (“Morrill”) and his company, J.M. Productions, produced a music video for the band “The Marked.” The video entitled “Video Marked” is the product of this controversy. Morrill filed suit in the Superior Court of the State of California, County of Los Angeles on May 22, 2000.¹ Specifically, Morrill alleged that Billy Corgan, the Smashing Pumpkins, Virgin Records America and Modi-Vational Films infringed his copyright for the music video of Video Marked. Morrill alleged various other claims including: breach of contract, negligent misrepresentation, constructive trust, breach of confidence, fraud and deceit. The case was removed from that Court because of the likelihood that the claims were copyright claims subject to preemption under 17 U.S.C. § 301(a).² Morrill moved to remand and the defendants moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c).³ Morrill’s motion was dismissed. The court treated the defendants’ motion as a motion for summary judgment.⁴ Later, the court dismissed Morrill’s breach of contract, negligent misrepresentation, and constructive trust claims.⁵ On July 19, 2001, Defendants moved for summary judgment on Morrill’s remaining claims for copyright infringement, breach of confidence, fraud and deceit, declaratory relief, and injunctive relief.⁶

¹ Morrill v. The Smashing Pumpkins, 157 F. Supp. 2d 1120, 1121 (C.D. Cal. 2001).

² 17 U.S.C. § 301(a) (West 2001).

³ *Morrill*, 157 F. Supp. 2d at 1121,1122.

⁴ *Id.* at 1122.

⁵ *Id.* at 1122.

⁶ *Morrill*, 157 F. Supp.2d at 1122.

II. BACKGROUND

The court states that the allegations in this case arise from events transpiring in St. Petersburg, Florida in 1986.⁷ At that juncture, Morrill had completed an “original music video/documentary” entitled “Video Marked,” that showed Corgan with his then-existing music group, The Marked.⁸ Upon completion of the video, Video Marked was publicized at various clubs as a promotional tool for the band.⁹ Shortly after Corgan left St. Petersburg, Morrill become aware that one of the copies of Video Marked was missing.¹⁰ Morrill believed his “prime suspect” to be Corgan.¹¹ “Morrill never mentioned the missing video to Corgan, nor did he pursue any further use of Video Marked until 1996, when he approached Corgan at a Smashing Pumpkins concert and inquired whether Corgan would consider marketing Video Marked.”¹² Due to Corgan’s refusal, Morrill abandoned any plans to market the video.¹³

In 1994, Corgan, The Smashing Pumpkins, and Virgin Records America released a video entitled “Vieuphoria” that contained short clips taken from Video Marked.¹⁴ “Vieuphoria, a ninety-minute video, contained about forty-five seconds of material from Video Marked.”¹⁵ Morrill alleges that he was unaware of the video Vieuphoria and that he only learned of its existence in 1998.¹⁶

III. LEGAL ANALYSIS

The main issue the Court considered in this case was: whether

⁷ *Id.* at 1122.

⁸ *Morrill*, 157 F. Supp.2d at 1121.

⁹ *Id.* at 1121.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Morrill*, 157 F. Supp.2d at 1121.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

an artist is a joint author of any works he has contributed his talents to even when it was directed, produced and edited by another individual in a joint collaboration. After the main issue is resolved, the two remaining issues of breach of confidence and fraud and deceit are then easily answered.

A. Copyright Infringement

Morrill alleges that he is “the sole owner of the copyright for Video Marked.”¹⁷ He asserts that the “certificate of registration he obtained in 1998 from the Register of Copyrights is proof of his sole copyright ownership.”¹⁸ In accord with his allegations, Morrill further challenges that any unauthorized use of the video infringes upon his copyright.¹⁹

The defendants allege the following:

Morrill’s copyright infringement claims are invalid for several reasons: (1) Defendant Corgan is a joint author of Video Marked and therefore cannot be held liable for infringing the copyright of a work he co-owns; (2) Morrill’s claims are barred by the copyright statute of limitations, which states: “[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued” under 17 U.S.C. § 507(b); and (3) Morrill’s claims are barred by the doctrine of laches.²⁰

An important definition of a “joint work” can be found in Section 101 of the Copyright Act of 1976. “A ‘joint work’ is a work prepared by two or more authors with the intention that their contributions be merged into separable or interdependent parts of a

¹⁷ *Morrill*, 157 F. Supp.2d at 1121.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Morrill*, 157 F. Supp. 2d at 1122,1123

unitary whole.”²¹ The Ninth Circuit determined, “for a work to be a ‘joint work’ there must be (1) a copyrightable work, (2) two or more ‘authors,’ and (3) the authors must intend their contributions be merged into separable or interdependent parts of a unitary whole.”²²

Simply creating a copyrightable contribution does not guarantee that a joint authorship has been established.²³ Every individual that contributes has to be deemed an “author” of the work.²⁴ The *Aalmuhammed v. Lee* decision²⁵ listed three criteria for determining, in the absence of a contract, whether a contributor should be considered an “author” for the purpose of joint authorship.²⁶ The three criteria are: (1) “whether the purported author controls the work and is “‘the inventive or master mind’ who ‘creates, or gives effect to the idea;”²⁷ (2) “whether the “putative coauthors make objective manifestations of shared intent to be coauthors;”²⁸ and (3) “ whether “the audience appeal of the work turns on both contributions and ‘the share of each in its success cannot be appraised.”²⁹

Morrill’s assertion that he is the sole author of Video Marked attempts to follow the *Aalmuhammed* factors.³⁰ “Morrill alleges that he shot the videos, chose the locations, directed every individual during shooting, and edited the final product by himself.”³¹ Additionally, Morrill asserts that he and Corgan both intended that Morrill be the video’s sole author.³²

²¹ *Morrill*, 157 F. Supp. 2d at 1123. See also 17 U.S.C. §§ 101, 507(b) (West 2001).

²² *Id.* (citing *Aalmuhammed v. Lee*, 202 F.3d 1227, 1231 (9th Cir. 2000)).

²³ *Id.* at 1123.

²⁴ *Id.*

²⁵ *Aalmuhammed v. Lee*, 202 F.3d 1227 (9th Cir. 2000).

²⁶ *Morrill*, 157 F. Supp. 2d at 1123.

²⁷ *Id.* (citing *Aalmuhammed*, 202 F.2d at 1234 (quoting *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 61, 4 S. Ct. 279, 28 L.Ed. 349 (1884)).

²⁸ *Morrill*, 157 F. Supp. 2d at 1123.

²⁹ *Id.* (citing *Aalmuhammed*, 202 F.2d at 1234 (quoting *Edward B. Marks Music Corp. v. Jerry Vogel Music Co.*, 140 F.2d 266,267 (2d Cir. 1944)).

³⁰ *Morrill*, 157 F. Supp. 2d at 1123.

³¹ *Id.* at 1124.

³² *Id.*

The Court strongly criticized Morrill's attempts to demonstrate his role as the video's sole author. While Morrill's filming, editing, and producing may have structured The Marked's music to its audience, without the music itself Video Marked would not exist.³³ "Since both parties had creative control over separate and indispensable elements of the completed product, the first *Aalmuhammed* factor favors a finding of joint authorship."³⁴

Two other criteria discussed by the court in *Aalmuhammed* also suggest joint authorship of Video Marked.³⁵ Once again, the Court criticized Morrill's claim in regards to a shared intent for himself to be the sole author. Morrill asserted that because his name was attached to the credits as the producer of the video it represents that he was the sole author.³⁶ Yet, "producer" does not equate to "author."³⁷ He further asserts that because he retained possession of all copies of Video Marked, he was the sole owner.³⁸ Yet, mere possession of the videotape does not equal copyright ownership.³⁹ His claim of sole ownership is further discredited by his own failure to retrieve his missing copy of Video Marked when he suspected that Corgan had taken it.⁴⁰ Lastly, Morrill's statements from his deposition expose their shared intent to create a joint work.⁴¹ In describing his 1996 conversation with Corgan, Morrill stated "Billy now that you have achieved this superstar status, don't you think that *our early collaborations* have certain marketability?"⁴² Accordingly, Morrill's own deposition illustrates the shared intent to be joint authors. They had agreed that Morrill would execute the "video aspects" and Corgan would supply the music.⁴³

³³ *Morrill*, 157 F. Supp. 2d at 1123.

³⁴ *Id.* at 1124.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Morrill*, 157 F. Supp. 2d at 1124.

³⁹ *Id.*

⁴⁰ *Id.* at 1125.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

Morrill did not mention the third *Aalmuhammed* factor which is that of the source of the audience appeal of the work.⁴⁴ It is important to understand that the audience appeal is due to both the “video aspects” and the music. Due to the success of Corgan’s new band, the Smashing Pumpkins, Video Marked appealed to the “audience’s ability to view images of a younger Corgan.”⁴⁵ This can be assumed by the packaging for Vieuphoria, which advertised “super secret, super special extra stuff shot by the band.”⁴⁶ Because the audience appeal “rests both on the video’s visual aspects and on the composition and performance of the music,” the third factor supports Video Marked as a joint work.⁴⁷

The court stated, “Notwithstanding the *Aalmuhammed* factors, Morrill additionally asserted that the certificate of registration he obtained from the Register of Copyrights demonstrates that he is the sole author of Video Marked.”⁴⁸ Yet, this registration occurred in 1998, which was twelve years after the video’s initial publication.⁴⁹ Section 410(c) of the Copyright Act requires registration to be “before or within five years after first publication of the work” in order to be considered *prima facie* evidence of the validity of the copyright.⁵⁰ Accordingly, in cases where registration occurs more than five years after initial publication it is up to the “court’s discretion” to determine the validity of the copyright interests.⁵¹

The law is clear when dealing with sound recordings.⁵² The court stated, “Absent an employment relationship or express assignment of copyright, the copyright for the sound recording ‘will be either exclusively in the performing artists, or (assuming an original contribution by the sound engineers, editors, etc., as employees of the record producer), a joint ownership between the

⁴⁴ *Morrill*, 157 F. Supp. 2d at 1125.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Morrill*, 157 F. Supp. 2d at 1125.

⁵⁰ *Id.* See 17 U.S.C. § 410 (West 2001).

⁵¹ *Morrill*, 157 F. Supp. 2d at 1125.

⁵² *Id.*

record producer and the performing artists.”⁵³ The court continued, “The case of a music video is equally clear: absent a written agreement, the copyright for the music video is a joint ownership between the performing artists and the video’s producer (assuming an original contribution by the producer or an employee of the producer).”⁵⁴ Accordingly, Corgan is a joint author of Video Marked.

As a final point, Corgan’s position as a joint author of the video allows him the authority to grant a non-exclusive license for the use of it.⁵⁵ “By conveying a video that used material from his joint work, Corgan impliedly granted a non-exclusive license to Virgin to distribute this material.”⁵⁶ Accordingly, Virgin, as the non-exclusive licensee cannot be subject to copyright liability for its use of Video Marked.⁵⁷

B. Breach of Confidence

In his complaint, Morrill alleged that Corgan violated his confidence by disclosing the creative ideas embodied in Video Marked, in spite of Corgan’s agreement not to reveal those ideas.⁵⁸ Corgan argued that Morrill’s claim had no merit specifically since no agreement was made to keep Video Marked confidential.⁵⁹ Corgan further asserted that the video was made for the purpose of promoting the band to its audience.⁶⁰ Although Morrill’s opposition did not address the claim for breach of confidence, it was later withdrawn during oral argument.⁶¹ Accordingly, summary judgment was granted.

⁵³ *Morrill*, 157 F. Supp. 2d at 1126.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Morrill*, 157 F. Supp. 2d at 1127.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Morrill*, 157 F. Supp. 2d at 1127.

C. Fraud and Deceit

In his complaint, Morrill alleged that Corgan promised to compensate and credit him if Corgan used the video in the future.⁶² “Corgan’s Motion for Summary Judgment refutes this alleged promise by pointing to Morrill’s deposition.”⁶³ In opposition to Corgan’s Motion for Summary Judgment, Morrill abandoned that basis of his fraud claim and attempted to assert a new one.⁶⁴ The court wrote, “Morrill’s opposition argues that Corgan’s 1996 statements to Morrill, that Corgan did not want to market Video Marked because he was unhappy with its sound quality, were made to induce reliance on the part of Morrill so that Morrill would not bring suit for copyright infringement before the statute of limitations on his claims had run.”⁶⁵ The Court criticized Morrill’s new argument for not only being “far-fetched” but also for lacking a cause of action.⁶⁶ Because Corgan is a joint author of Video Marked, his use of the video did not infringe its copyright.⁶⁷ Therefore, Corgan’s 1996 statements did not cause any detrimental reliance on the part of Morrill.

IV. CONCLUSION

The Court found that Corgan was a joint author of the video named “Video Marked.” Morrill directed, produced and edited the video, while Corgan and The Marked composed and performed the music that was played in the video. As a joint author, Corgan cannot be held liable for copyright infringement based on his use of Video Marked.⁶⁸ As such, he retains the right to use the forty-

⁶² *Morrill*, 157 F. Supp. 2d at 1127.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Morrill*, 157 F. Supp. 2d at 1127.

⁶⁷ *Id.*

⁶⁸ *Id.* at 1126.

five seconds (or more if he so chooses) of material from Video Marked in the new ninety-minute video by the Smashing Pumpkins named Vieuphoria. He also has the power to grant a non-exclusive license for use of such material. Accordingly, Virgin Records America cannot be subject to copyright liability for its use of Video Marked. Lastly, Corgan's motions for summary judgment on the breach of confidence and fraud and deceit claims were granted.

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