

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 27, 2024

Decided March 19, 2024

Before

JOEL M. FLAUM, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

Nos. 23-1527 & 23-2566

UIRC-GSA HOLDINGS, LLC,
Plaintiff-Appellant,

v.

WILLIAM BLAIR & COMPANY, L.L.C.,
and MICHAEL KALT,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 15-cv-9518

Robert W. Gettleman,
Judge.

ORDER

Starting in 2012, UIRC-GSA Holdings offered several bonds to raise money for its real estate business. UIRC drafted at least two documents in connection with each of these transactions: a private placement memorandum and an indenture of trust. But most of its “drafting” was really “borrowing” from other sources. The Idaho Housing and Finance Association produced similar documents for an earlier transaction of their own, and UIRC’s lawyer found them and emailed a copy to UIRC executives. UIRC’s

final documents are remarkably similar to Idaho's. Nonetheless, UIRC submitted them to the U.S. Copyright Office to apply for copyrights, which were granted.

To help market the bonds, UIRC hired Blair. While they were working on the fifth bond offering, another company hired Blair to draft bond documents and find investors for a similar transaction. As UIRC tells it, Blair drafted for that company nearly verbatim versions of the documents UIRC copyrighted. So UIRC sued Blair, alleging a violation of the Copyright Act, 17 U.S.C. §§ 101 *et seq.* Both UIRC and Blair moved for summary judgment, and the district court granted Blair's motion. After final judgment, Blair moved for attorney's fees. As Blair was the prevailing party in a Copyright Act suit, 17 U.S.C. § 505 allowed the district court to award fees on motion. The district court granted this motion, too.

UIRC appealed, and we affirmed. *See UIRC-GSA Holdings, LLC v. William Blair & Co., L.L.C.*, 90 F.4th 908, 912 (7th Cir. 2024). We held that the copyrights in UIRC's offering documents were invalid. The parts UIRC borrowed from Idaho were not independently created because there was insufficient nontrivial expressive variation between Idaho's language and UIRC's final work. The parts distinct enough to be independently created were unoriginal—the language was fragmented, factual, or dictated by functional considerations. Therefore, Blair did not violate copyright law when it copied those portions of the documents. We also held that the district court did not abuse its discretion by granting Blair's motion for fees associated with the district court phase of this litigation. The district court considered the factors the Supreme Court has provided for Copyright Act fees motions and did not reach an obviously wrong result when considering them. *See Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994).

Blair asks for its fees incurred on appeal, which amount to \$260,219.25. UIRC says a fee award would be improper under the *Fogerty* factors and objects to the amount, which it asks us to reduce to \$160,620.

We have considered Blair's motion and UIRC's response. First, we discuss why Blair is entitled to fees. Second, we explain why Blair is entitled to the full amount of fees it requested.

I.

"In any civil action" under the Copyright Act, a court "in its discretion" may "award a reasonable attorney's fee to the prevailing party" 17 U.S.C. § 505 (2023);

UIRC-GSA Holdings, 90 F.4th at 917–18. To “guide [our] discretion,” *Fogerty*, 510 U.S. at 534 n.19, we consider four factors:

(1) the frivolousness of the suit; (2) the losing party’s motivation for bringing or defending against a suit; (3) the objective unreasonableness of the claims advanced by the losing party; and (4) the need to advance considerations of compensation and deterrence.

Live Face on Web, LLC v. Cremation Soc’y of Ill., Inc., 77 F.4th 630, 631 (7th Cir. 2023) (citing *Fogerty*, 510 U.S. at 534 n.19)); *see also UIRC-GSA Holdings*, 90 F.4th at 918.

There is no evidence that UIRC’s suit was frivolous. Blair points to UIRC’s decision “to litigate a copyright case (for years) based on material that it knew it did not draft.” But as we have explained, UIRC did draft some of the material by itself. *See UIRC-GSA Holdings*, 90 F.4th at 915. And it was not frivolous for UIRC to argue the parts it did not copy might support a copyright. Whether this was reasonable is another question. This factor favors UIRC.

The motivation factor does not favor either party. Blair points to UIRC’s conduct during the district court proceedings, implying that it is a copyright troll. We do not agree. UIRC filed just four complaints in the district court, during a single lawsuit about a single copyright. *Cf. Live Face*, 77 F.4th at 634 (explaining plaintiff was a copyright troll because, in part, it “filed more than 200 copyright suits in 29 different federal district courts”). But there is little support that UIRC was motivated by a desire to safeguard its intellectual property, as opposed to an interest in forcing out competitors.

The objectively reasonable factor favors neither party. On one hand, this appeal required close reasoning on a difficult question. On the other hand, UIRC deployed several irrelevant or improper arguments in its briefing before us. For example, UIRC cited expert testimony about the creativity of its documents, which is not admissible for that purpose. *See UIRC-GSA Holdings*, 90 F.4th at 917. The company also discussed at length the novelty of its idea, which is irrelevant to answer the copyright question. *Id.* at 914. The decision to include this material is not erroneous or inappropriate, and UIRC was free to make these arguments in its briefs. But that choice makes its appeal less reasonable.

The compensation and deterrence factor favors Blair. “[T]he only compensation available” to a copyright defendant “is to recoup its expenses.” *Id.* at 635. And not

awarding fees might deter defendants like Blair from defending cases “that might ... persuade the [c]ourt and thus bring clarity to future litigants.” *Id.*

The *Fogerty* factors are in equipoise. One favors each side and two favor neither. This means UIRC must rebut the presumption that Blair may recover costs. *Id.* at 635.

“[T]here is a strong presumption that prevailing defendants may recover costs.” *Design Basics, LLC v. Kerstiens Homes & Designs, Inc.*, 1 F.4th 502, 508 (7th Cir. 2021); *Assessment Techs. of WI, LLC v. WIREdata, Inc.*, 361 F.3d 434, 437 (7th Cir. 2004) (noting presumption in favor of fees for prevailing defendants is “very strong”); *DeliverMed Holdings, LLC v. Schaltenbrand*, 734 F.3d 616, 625 (7th Cir. 2013) (same); *Klinger v. Conan Doyle Est., Ltd.*, 761 F.3d 789, 791 (7th Cir. 2014) (same); see *Timothy B. O’Brien LLC v. Knott*, 962 F.3d 348, 350–51 (7th Cir. 2020) (collecting cases). The court treats copyright plaintiffs and defendants differently because defendants win “not a small award but no award.” *Assessment Techs.*, 361 F.3d at 437. With nothing to fight for, the weary defendant “might be forced into a nuisance settlement or deterred altogether from exercising his rights.” *Id.*

We have never said the presumption warrants automatic victory for prevailing defendants. See *Knott*, 962 F.3d at 351 (“[O]ur caselaw has never held that the strong presumption was insurmountable.”) “[R]ather, we have consistently required a fact-specific, case-by-case inquiry.” *Id.* In *Knott*, we performed that careful inquiry. We reviewed a district court decision denying fees to a prevailing defendant and held that it did not abuse its discretion when it found that the presumption was overcome. *Id.* at 352. The plaintiff there voluntarily dismissed the copyright claims after the defendants answered the complaint and before the claims “were substantially litigated.” *Id.* at 350, 352.

No equitable factor, such as in *Knott*, nudges the *Fogerty* balancing over the presumption hump here. The core dispute in this case, from the beginning, has been about copyrights. UIRC lost that dispute. The act giving UIRC a cause of action also demands that it award Blair fees. Because Blair is entitled to fees, we next address the amount it is due.

II.

Blair requests \$260,219.25 in fees for briefing and arguing this appeal. It uses the lodestar method to determine the total, multiplying the hours each attorney expended by the attorney’s billing rate, then summing the totals. See *Hensley v. Eckerhart*, 461 U.S.

424, 433 (1983). UIRC does not dispute Blair's methodology. Instead, it objects to the attorneys' billing rates and supposes we reduce Blair's fees because the attorneys who handled the district court phase billed at lower rates. UIRC proposes we reduce the fees by charting a different course: (1) Averaging the trial attorneys' rates, (2) multiplying that number by the total hours the appellate attorneys billed, and (3) entering an award for Blair in that amount.

We will not follow UIRC's course. As we have said, "[t]he best evidence of an attorney's market rate is his or her actual billing rate for similar work." *Johnson v. GDF, Inc.*, 668 F.3d 927, 933 (7th Cir. 2012); *cf. Assessment Techs.*, 361 F.3d at 438 ("The best evidence of the value of the lawyer's services is what the client agreed to pay him."). Blair's attorneys submitted their actual billing records for this matter. The amount they requested includes a 10 percent "discount" the firm applied to Blair's actual bill. UIRC does not contest that the matters billed are legitimate and associated with the appeal. And Blair's lead attorney swore in an affidavit that she and the others on Blair's matter charged rates "typical" for their clients in 2023.

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For those reasons, we GRANT Blair's motion for fees in its entirety.