

Appeal No. 11-55863

United States Court of Appeals

FOR THE

Ninth Circuit

Laura Siegel Larson,
Plaintiff, Counterclaim-Defendant, and Appellant

v.

Warner Bros. Entertainment Inc. and DC Comics,
Defendants, Counterclaimants, and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA
THE HONORABLE OTIS D. WRIGHT II, JUDGE
CASE No. CV-04-8400 ODW (RZX)

**DECLARATION OF MATTHEW T. KLINE IN SUPPORT OF MOTION BY
APPELLEES WARNER BROS. ENTERTAINMENT INC. AND DC COMICS
TO DISMISS INTERLOCUTORY APPEAL FOR LACK OF JURISDICTION**

O'MELVENY & MYERS LLP
DANIEL M. PETROCELLI (CA S.B. # 97802)
MATTHEW T. KLINE (CA S.B. # 211640)
CASSANDRA L. SETO (CA S.B. # 246608)
1999 AVENUE OF THE STARS, 7TH FLOOR
LOS ANGELES, CA 90067-6035
TELEPHONE: (310) 553-6700
FACSIMILE: (310) 246-6779

PERKINS LAW OFFICE, P.C.
PATRICK T. PERKINS (NY S.B. # 2603371)
1711 ROUTE 9D
COLD SPRING, NY 10516
TELEPHONE: (845) 265-2820
FACSIMILE: (845) 265-2819

Attorneys for Appellees Warner Bros. Entertainment Inc. and DC Comics

DECLARATION OF MATTHEW T. KLINE

I, Matthew T. Kline, declare and state as follows:

1. I am an attorney licensed to practice in the State of California and admitted to practice before the United States Court of Appeals for the Ninth Circuit. I am a partner at O'Melveny & Myers LLP, counsel of record for appellees Warner Bros. Entertainment Inc. and DC Comics (collectively "DC") in the above-entitled action. I make this declaration in support of the Motion By Appellees Warner Bros. Entertainment Inc. And DC Comics To Dismiss Interlocutory Appeal For Lack of Jurisdiction. I have personal knowledge of the matters set forth herein, and if called to testify to those facts, I could and would do so competently.

2. Attached hereto as Exhibit A is a true and correct copy of an excerpt from a "Notice of Termination of Transfer Covering Extended Renewal Term" served by Joanne Siegel and Laura Siegel Larson (hereinafter "appellant") on April 3, 1997.

3. Attached hereto as Exhibit B is a true and correct copy of the "Complaint" filed by appellant in the district court proceeding below, Case No. CV-04-8400 ODW (RZx), on October 8, 2004.

4. Attached hereto as Exhibit C is a true and correct copy of the "Answer and Counterclaims" filed by DC in the district court on November 22, 2004.

5. Attached hereto as Exhibit D is a true and correct copy of “Defendants’ Notice of Motion and Motion for Partial Summary Judgment; Memorandum of Points and Authorities and Schedules A & B in Support Thereof,” filed by DC in Case No. CV-04-8776 ODW (RZx), on April 30, 2007.

6. Attached hereto as Exhibit E is a true and correct copy of “Plaintiffs Joanne Siegel and Laura Siegel Larson’s Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment,” filed by appellant in the district court on April 30, 2007.

7. Attached hereto as Exhibit F is a true and correct copy of the “Order Granting in Part and Denying in Part Plaintiffs’ Motion for Partial Summary Judgment; Order Granting in Part and Denying in Part Defendants’ Motion for Partial Summary Judgment” issued by the district court on March 26, 2008.

8. Attached hereto as Exhibit G is a true and correct copy of “Plaintiffs Joanne Siegel and Laura Siegel Larson’s Memorandum of Points and Authorities in Support of Motion for Clarification and/or Reconsideration of the Court’s March 26, 2008 Partial Summary Judgment Order,” filed by appellant in the district court on May 16, 2008.

9. Attached hereto as Exhibit H is a true and correct copy of the “Order Denying Defendants’ Motion for Clarification or Reconsideration; Order Denying

Plaintiffs' Motion for Clarification or Reconsideration" issued by the district court on July 3, 2008.

10. Attached hereto as Exhibit I is a true and correct copy of "Defendants' Brief on Additional Issues," filed by DC in the district court on July 21, 2008.

11. Attached hereto as Exhibit J is a true and correct copy of "Plaintiffs' Memorandum of Points and Authorities on Pre-Trial Issues Filed Pursuant to the Court's July 3, 2008 Order," filed by appellant in the district court on July 21, 2008.

12. Attached hereto as Exhibit K is a true and correct copy of "Defendants' Response to Plaintiffs' Brief on Additional Issues," filed by DC in the district court on July 28, 2008.

13. Attached hereto as Exhibit L is a true and correct copy of "Plaintiffs' Opposition to Defendants' Brief on Additional Issues," filed by appellant in the district court on July 28, 2008.

14. Attached hereto as Exhibit M is a true and correct copy of the foreword to *Superman Archives, Vol. 1*, as originally attached to the "Declaration of Michael Bergman in Support of Defendants' Response to Plaintiffs' Brief on Additional Issues" filed by DC in the district court on July 28, 2008.

15. Attached hereto as Exhibit N is a true and correct copy of the “Order Regarding Right to Jury Trial for Remaining Issues” issued by the district court on October 6, 2008.

16. Attached hereto as Exhibit O is a true and correct copy of the “Second Amended Complaint” filed by appellant in the district court on October 8, 2008.

17. Attached hereto as Exhibit P is a true and correct copy of the “Order Resolving Additional Issues” issued by the district court on August 12, 2009.

18. Attached hereto as Exhibit Q is a true and correct copy of “Plaintiffs Joanne and Laura Siegel Larson’s Opposition to Defendants’ Motion for Reconsideration of the Court’s August 12, 2009 Order,” filed by appellant in the district court on October 9, 2009.

19. Attached hereto as Exhibit R is a true and correct copy of a “Notice of Reassignment of Case Due to Unavailability of Judicial Officer” issued by the district court on November 20, 2009.

20. Attached hereto as Exhibit S is a true and correct copy of the “Joint Status Report” filed by DC and appellant in the District Court on December 21, 2009.

21. Attached hereto as Exhibit T is a true and correct copy of “Plaintiffs’ Notice of Motion and Motion for Entry of a Partial Judgment Under Fed. R. Civ. P.

54(b) and for Stay of Remaining Claims Pending Appeal; Memorandum of Points and Authorities,” filed by appellant in the District Court on August 12, 2010.

22. Attached hereto as Exhibit U is a true and correct copy of the “First Amended Complaint” filed by DC in Case No. CV-10-3633 ODW (RZx), on September 3, 2010.

23. Attached hereto as Exhibit V is a true and correct copy of “Defendants’ Opposition to Plaintiffs’ Motion for Entry of Partial Judgment Under Fed. R. Civ. P. 54(b) and for Stay of Remaining Claims Pending Appeal,” filed by DC in the district court on September 3, 2010.

24. Attached hereto as Exhibit W is a true and correct copy of the “Order Requesting Further Briefing and Denying Without Prejudice Plaintiffs’ 54(b) Motion [618]” issued by the district court on October 13, 2010.

25. Attached hereto as Exhibit X is a true and correct copy of “The Parties’ Joint Submission re: Case Management Issues Filed Pursuant to Court’s October 13, 2010 Order,” filed by DC and appellant in the District Court on November 8, 2010.

26. Attached hereto as Exhibit Y is a true and correct copy of “Defendants’ Opposition to Plaintiffs Joanne Siegel and Laura Siegel Larson’s Notice of Motion and Motion for Leave to File Third Amended Complaint

Pursuant to Fed. R. Civ. P. 15 and 16,” filed by DC in the district court on January 18, 2011.

27. Attached hereto as Exhibit Z is a true and correct copy of the “Third Amended Complaint” filed by appellant in the district court on February 3, 2011.

28. Attached hereto as Exhibit AA is a true and correct copy of “Plaintiffs’ Notice of Motion and Motion for Entry of a Partial Judgment Under Fed. R. Civ. P. 54(b) and for Stay of Remaining Claims Pending Appeal; Memorandum of Points and Authorities,” filed by appellant in the district court on February 18, 2011.

29. Attached hereto as Exhibit BB is a true and correct copy of “Defendants’ Opposition to Plaintiffs’ Motion for Entry of Partial Judgment Under Fed. R. Civ. P. 54(b) and Stay of Remaining Claims Pending Appeal,” filed by DC in the district court on February 28, 2011.

30. Attached hereto as Exhibit CC is a true and correct copy of the “Order Granting Motion for Entry of a Partial Judgment Under Fed. R. Civ. P. 54(b) and for Stay of Remaining Claims Pending Appeal” issued by the district court on March 15, 2011.

31. Attached hereto as Exhibit DD is a true and correct copy of the “Judgment Pursuant to Fed. R. Civ. P. 54(b)” issued by the district court on March 15, 2011.

32. Attached hereto as Exhibit EE is a true and correct copy of the “Order Vacating March 15, 2011 Judgment [660] and Striking Superfluous Allegations from DC Comics’ First Amended Counterclaim” issued by the district court on May 5, 2011.

33. Attached hereto as Exhibit FF is a true and correct copy of the “Order Granting Renewed Motion for Entry of a Partial Judgment Under Fed. R. Civ. P. 54(b) and for Stay of Remaining Claims Pending Appeal Pursuant to the Court’s May 5, 2011 Order” issued by the district court on May 17, 2011.

34. Attached hereto as Exhibit GG is a true and correct copy of the “Judgment Pursuant to Fed. R. Civ. P. 54(b)” issued by the District Court on May 17, 2011.

35. Attached hereto as Exhibit HH is a true and correct copy of the summary listing for *Action Comics No. 4* as it appeared on the website www.dcindexes.com as of June 27, 2011 (available at <http://www.dcindexes.com/database/comic-details.php?comicaid=576>).

36. Attached hereto as Exhibit II is a true and correct copy of the *Action Comics No. 1* comic book originally published with a cover date of June 1938.

37. Attached hereto as Exhibit JJ is a true and correct copy of excerpts from the *Action Comics No. 4* comic book originally published with a cover date of September 1938.

38. Attached hereto as Exhibit KK is a true and correct copy of a reproduction of the *Superman No. 1* comic book originally published on or around May 18, 1939.

39. Attached hereto as Exhibit LL is a true and correct copy of an “Order” issued by this Court in Appeal No. 10-56594 on January 11, 2011.

40. Attached hereto as Exhibit MM is a true and correct copy of an “Order” issued by this Court in Appeal No. 10-73851 on January 7, 2011.

41. Attached hereto as Exhibit NN is a true and correct copy of an “Order” issued by this Court in Appeal No. 10-56980 on January 13, 2011.

42. Attached hereto as Exhibit OO is a true and correct copy of an “Order” issued by this Court in Appeal No. 10-56980 on January 19, 2011.

43. Attached hereto as Exhibit PP is a true and correct copy of “Joint Stipulation Re: Motion For A Protective Order Staying Depositions Pending Rulings On Dispositive Motions And Limiting Scope And Time Of Depositions,” filed by the parties in Case No. CV-10-3633 ODW (RZx), on September 13, 2010.

I declare under penalty of perjury that the foregoing is true and correct. This declaration is executed this 28th day of June 2011 in Los Angeles, California.

/s/ Matthew T. Kline
Matthew T. Kline