

EXHIBIT 2

33EHMARC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

MARVEL CHARACTERS, INC.,

Plaintiff,

v. 00 Civ. 1393 (RCC)

JOSEPH H. SIMON,

Defendant.

-----x

New York, N.Y.
March 14, 2003
10:30 a.m.

Before:

HON. RICHARD CONWAY CASEY

District Judge

APPEARANCES

PAUL HASTINGS JANOFSKY & WALKER, LLP
Attorneys for Plaintiff
BY: DAVID FLEISHER

DARBY & DARBY, P.C.
Attorneys for Defendant
BY: ROBERT WEISBEIN

33EHMARC

1 (In open court)

2 THE DEPUTY CLERK: Your Honor, now before the court
3 this morning, Marvel Characters, Inc. v. Joseph H. Simon.

4 Plaintiff ready?

5 MR. FLEISHER: Yes.

6 THE DEPUTY CLERK: Defendant ready?

7 MR. WEISBEIN: Yes.

8 THE DEPUTY CLERK: Counsel please identify yourselves
9 for the record.

10 MR. FLEISHER: Good morning, your Honor. It is David
11 Fleisher of Paul Hastings Janofsky & Walker for plaintiff
12 Marvel Characters, Inc.

13 MR. WEISBEIN: Good morning, your Honor. Robert
14 Weisbein for defendant Joe Simon from the Darby & Darby law
15 firm.

16 THE COURT: I believe I have an outstanding motion to
17 strike a demand for a jury and I will rule on that for you and
18 then we will get to the rest.

19 Following the Second Circuit's decision to remand the
20 case to this court, plaintiff, Marvel Characters, renewed its
21 motion to strike the defendant Joseph Simon's jury demand for
22 purposes of trial.

23 The only remaining claim in the case is plaintiff's
24 claim for a declaration that defendant's copyright termination
25 notices are invalid because defendant is not the author of the

33EHMARC

1 works in question for copyright purposes. Because there is no
2 claim for damages, the court concludes that this action is more
3 akin to a quiet title action than an ejectment action. The
4 relief being sought is equitable in nature; plaintiff's motion
5 is therefore granted.

6 That being taken care of, where do we stand,
7 gentlemen?

8 MR. FLEISHER: Your Honor, discovery was concluded
9 long ago, prior to the motions for summary judgment.

10 THE COURT: Wasn't there some representation that this
11 case was being settled?

12 MR. FLEISHER: I believe, your Honor, that you raised
13 that question at one of our prior conferences. We have had a
14 number of discussions at various stages. At this juncture they
15 have not borne fruit.

16 THE COURT: All right. Fine. That is all I need to
17 know. I thought I had been told by someone that it was on the
18 verge of being settled. You say that is not the case, so let's
19 get on with it.

20 Where do we stand? Are you ready for trial?

21 MR. FLEISHER: Yes. We just need a date, your Honor.

22 THE COURT: OK. Counsel for the defendant, Mr. Simon.

23 MR. WEISBEIN: Yes, your Honor. We are ready to go to
24 trial.

25 THE COURT: Now tell me how long do you estimate it

33EHMARC

1 will take.

2 MR. FLEISHER: I believe in our prior discussions we
3 have estimated collectively three days for the case, Judge.

4 MR. WEISBEIN: That is correct, your Honor.

5 THE COURT: OK. You both agree.

6 Mr. Brantley, what do you have at your schedule there
7 that would allow for three days?

8 THE DEPUTY CLERK: April 14, your Honor.

9 THE COURT: How does that fit in your schedule,
10 gentlemen?

11 MR. FLEISHER: Your Honor, I am almost booked solid
12 between now and the end of April. With the exception of a
13 short vacation in May, I am otherwise available just about any
14 time.

15 THE COURT: OK.

16 MR. WEISBEIN: Your Honor, Mr. Fleisher and I spoke
17 before and we sort of tried to block out what the availability
18 dates are. I personally won't be trying the case. My partner
19 Amy Benjamin will. She couldn't be here today. The only dates
20 she is not available basically are May 4th through the 10th and
21 then June 18th through the 27th. So any other time we are
22 flexible.

23 THE COURT: Does that help you, Mr. Brantley, at all?

24 THE DEPUTY CLERK: That takes us into July, your
25 Honor. We have July, we can start it on July 18th. Excuse me.

33EHMARC

1 We can start it July 16th.

2 THE COURT: Gentlemen, does that fit your schedules?

3 MR. WEISBEIN: Your Honor, that is fine.

4 MR. FLEISHER: Yes, your Honor.

5 THE COURT: July 16th it is.

6 I would like a pretrial order two weeks in advance.

7 Any questions, evidentiary questions you anticipate, they
8 should be raised in the pretrial order. If I deem a hearing
9 necessary, we will schedule it and try and get everything
10 resolved in advance of the trial date.

11 I am just reminded. Could you possibly have your
12 pretrial materials in a month in advance because I am going to
13 be teaching the beginning of the month. So I will be
14 unavailable to go over the materials. So one month in advance
15 of the trial would you have the pretrial order in.

16 MR. WEISBEIN: Fine, your Honor.

17 MR. FLEISHER: That is fine, your Honor. Thank you.

18 THE COURT: It shouldn't be difficult since you don't
19 have a jury and you don't have requests to charge and voir dire
20 and all that stuff. Just focus on the case itself.

21 Gentlemen, thank you very much.

22 Have a lovely weekend.

23 (Adjourned)

24

25