

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2011 APR 21 P 3:55

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Patricia Ann Lopez,
P.O. Box 1425
Ohkay Owingeh, NM 87566

Plaintiff,

v.

The Associated Press
a New York not for profit corporation,
450 W. 33rd Street, 16th Floor
New York, NY 10001

Getty Images (US), Inc.
a New York corporation,
601 N. 34th Street
Seattle, WA 98103

Defendants.

Civil Action No. 1:11 cv 437
CMH/JFA

COMPLAINT

This is an action by Patricia Ann Lopez (Lopez) to recover damages arising from infringement of Lopez's federally registered Copyrights by The Associated Press (AP) and Getty Images (US), Inc. (Getty), collectively referred to herein as Defendants, and to enjoin Defendants' future infringement. Lopez is the most famous and celebrated of a handful of artists who create drawings in courtrooms where cameras are forbidden. Over a period of over 30 years, Lopez has covered the most famous trials at which the most infamous criminals as well as others have had their fates decided. Among the trials Lopez has covered were the Karen Silkwood trial

(1979), the Keating savings & loan trial (1989), Whitewater (1993), Branch Davidian (Waco, TX)(1994), Susan Smith murder trial (1995), Oklahoma City bombing trials (McVeigh & Nichols)(1998), James Byrd dragging death trial (1999), Andrea Yates murder trial (2001), Kobe Bryant rape case (2003), Enron trials (2004), and Abu Ghraib courts martial (2005).

With few exceptions, Lopez maintains copyright ownership of her drawings and licenses them for contemporaneous use by media, retaining all other future rights. Lopez discovered that AP and Getty have been offering for sale or license hundreds of her drawings, charging as much as \$12,000 for a one month license for a single drawing in some cases. These activities are without authority by Lopez. Accordingly, Lopez has brought this action and seeks damages, an accounting, the imposition of a constructive trust upon Defendants' illegal profits, and injunctive relief.

THE PARTIES

1. Lopez is an individual residing in New Mexico with a mailing address of P.O. Box 1425, Ohkay Owingeh, NM. Lopez owns copyrights including federal copyright registration for numerous ones of her original drawings.

2. Upon information and belief, Defendant AP is a New York not for profit corporation having a corporate address of 450 West 33rd Street, 16th Floor, New York, NY. Upon information and belief, AP conducts business in this district through means including an Internet website accessible at the web address www.associatedpress.com. On information and belief, that website includes an interactive page titled "AP Images" where images can be purchased or their use licensed. Among those images are hundreds depicting Lopez's drawings without authorization from Lopez. Upon information and belief, AP is licensed to conduct business in

Virginia including in this district and may be served via its Virginia Registered Agent C T Corporation System, 4701 Cox Road, Suite 301, Glen Allen, VA 23060.

3. Upon information and belief, Defendant Getty is a New York corporation having a principal place of business at 601 North 34th Street, Seattle, WA 98103. Upon information and belief, Getty conducts business in this district through means including an Internet website accessible at the web address www.gettyimages.com. On information and belief, that website includes an interactive page titled "Getty Images" where images can be purchased or their use licensed. Among those images are hundreds depicting Lopez's art without authorization from Lopez. Upon information and belief, Getty is licensed to conduct business in Virginia including in this district and may be served via its Virginia Registered Agent C T Corporation System, 4701 Cox Road, Suite 301, Glen Allen, VA 23060.

JURISDICTION

4. This Court has subject matter jurisdiction over Lopez's claim for Copyright infringement pursuant to 17 U.S.C. § 501, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a).

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) as well as under 28 U.S.C. § 1400(a) because (a) at least some of the acts of infringement and other wrongful conduct alleged occurred in the Eastern District of Virginia; (b) Defendants may be found in the Eastern District of Virginia; and (c) Defendants have a sufficient connection with the Eastern District of Virginia to make venue proper in this District, all as alleged in this Complaint.

FACTS COMMON TO LOPEZ'S CLAIMS

6. Lopez is a nationally renowned courtroom artist who is often designated the "pool artist" for nationally significant trials or conducts her trade on behalf of one or more entities such as television networks and print media. In all cases, Lopez maintains the status of an "independent contractor."

7. Lopez has created courtroom drawings at some of the most famous trials at which the most infamous criminals as well as others have had their fates decided. Among the trials Lopez has covered were the Karen Silkwood trial (1979), the Keating savings & loan trial (1989), Whitewater (1993), Branch Davidian (Waco, TX)(1994), Susan Smith murder trial (1995), Oklahoma City bombing trials (McVeigh & Nichols)(1998), James Byrd dragging death trial (1999), Andrea Yates murder trial (2001), Kobe Bryant rape case (2003), Enron trials (2004), Abu Ghraib courts martial (2005) and Fort Hood shooting proceedings (2010).

8. With few exceptions, Lopez maintains copyright ownership of her drawings and licenses them for contemporaneous use by media, retaining all other future rights.

9. Numerous ones of Lopez's drawings are the subject of federal copyright registration including the following pertinent to this civil action:

A. Exhibit 1, Registration No. VA1-749-386, registered November 18, 2010, for the work "Abu Ghraib 7." Exhibit 1 also includes evidence that this work is being offered for sale or license by AP and Getty.

B. Exhibit 2, Registration No. VA1-749-579, registered November 18, 2010, for the work "Abu Ghraib 12." Exhibit 2 also includes evidence that this work is being offered for sale or license by AP and Getty.

C. Exhibit 3, Registration No. VA1-749-580, registered November 18, 2010, for the work "Abu Ghraib 11." Exhibit 3 also includes evidence that this work is being offered for sale or license by AP and Getty.

D. Exhibit 4, Registration No. VA1-749-581, registered November 18, 2010, for the work "Abu Ghraib 10." Exhibit 4 also includes evidence that this work is being offered for sale or license by AP and Getty.

E. Exhibit 5, Registration No. VA1-750-191, registered November 24, 2010, for the work "Kobe Bryant Trial 1." Exhibit 5 also includes evidence that this work is being offered for sale or license by Getty.

F. Exhibit 6, Registration No. VA1-750-192, registered November 24, 2010, for the work "Kobe Bryant Trial 2." Exhibit 6 also includes evidence that this work is being offered for sale or license by AP and Getty.

G. Exhibit 7, Registration No. VA1-750-193, registered November 24, 2010, for the work "Terry Nichols Trial 1." Exhibit 7 also includes evidence that this work is being offered for sale or license by AP and Getty.

H. Exhibit 8 includes Registration Nos. VA1-749-183, registered November 17, 2010 for the work "Abu Ghraib 1," VA1-749-184, registered November 17, 2010 for the work "Abu Ghraib 2," VA1-749-413, registered November 18, 2010 for the work "Abu Ghraib 3," VA1-749-409, Registered November 18, 2010 for the work "Abu Ghraib 4," VA1-749-408, registered November 18, 2010 for the work "Abu Ghraib 5," VA1-749-402, registered November 18, 2010 for the work "Abu Ghraib 6," VA1-749-376, registered November 18, 2010 for the work "Abu Ghraib 8," VA1-749-582, registered November 18, 2010 for the work "Abu Ghraib

9,” VA1-750-350, registered November 24, 2010 for the work “Enron Trial 1,” and VA1-750-194, registered November 24, 2010 for the work “Terry Nichols Trial 2.” On information and belief, at one time or another, one or both of AP and Getty have offered for sale or licensed and sold or licensed one or more of these federally registered works.

10. Exhibit 9 consists of a series of screen shots from AP’s AP Images website depicting scores of thumbnail images of Lopez’s drawings that, on information and belief, AP offers for license or sale and licenses and sells. These actions are without authorization from the copyright owner, Lopez.

11. Exhibit 10 consists of printouts of dozens of images of Lopez’s drawings printed from Getty’s Getty Images website. On information and belief, Getty offers for sale or license and sells and licenses these images within this district. These actions are without authorization from the copyright owner, Lopez.

12. On information and belief, through the date of filing of this Complaint, Defendants continue to advertise, market, and sell Lopez’s copyrighted drawings on their interactive websites within this district.

13. On information and belief, Defendants’ wrongful conduct includes advertising, marketing, sales, reproduction and copying of virtually identical, if not identical, copies of Lopez’s federally copyrighted drawings within this district.

14. The infringing activities of Defendants are clearly willful since they persist despite the fact that Defendants know or should know that they are not the copyright owner nor have they been authorized by the Copyright owner (Lopez) to conduct these activities.

15. On information and belief, the injuries and damages that Lopez has sustained have been directly and proximately caused by Defendants' wrongful infringement of Lopez's federal Copyright rights in and to her drawings.

COUNT I

(Copyright Infringement - Against All Defendants)

16. Lopez repeats and incorporates by this reference each and every allegation set forth in paragraphs 1-15, inclusive.

17. Lopez is the sole owner of the federal Copyright Registrations identified in Exhibits 1-8.

18. Defendants have infringed Lopez's federal Copyright registrations by copying, advertising, marketing, licensing and selling images corresponding to the deposits accompanying those registrations.

19. Defendants' conduct has been willful within the meaning of the Copyright Act. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Lopez's federally registered Copyrights.

20. As a result of the wrongful conduct, Defendants are liable to Lopez for copyright infringement pursuant 17 U.S.C. § 501. Lopez has suffered damages. Lopez has suffered, and will continue to suffer, substantial losses, including, but not limited to, damage to her business reputation and goodwill. Lopez is entitled to recover damages, which include her losses and any and all profits Defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504. Alternatively, Lopez is entitled to statutory damages under 17 U.S.C. § 504(c).

21. In addition, because Defendants' infringement has been willful, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

22. Lopez is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Lopez has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Lopez's copyrighted works are unique and valuable property which has no readily determinable market value, (b) Defendants' infringement harms Lopez's business reputation and goodwill such that Lopez could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Lopez is continuing.

23. Lopez is also entitled to recover its attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505.

COUNT II

(For Imposition of a Constructive Trust Upon The Illegal Profits - Against All Defendants)

24. Lopez repeats and incorporates by this reference each and every allegation set forth in paragraphs 1-23, inclusive.

25. Defendants' conduct constitutes deceptive, fraudulent, and wrongful conduct in the nature of passing off the infringing drawings as genuine Lopez drawings approved or authorized for sale or license by Lopez.

26. By virtue of Defendants' wrongful conduct, Defendants have illegally received money and profits that rightfully belong to Lopez.

27. Upon information and belief, Defendants hold the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and

traced.

28. Defendants hold the money and profits they have illegally received as constructive trustees for the benefit of Lopez.

COUNT III

(Accounting - Against All Defendants)

29. Lopez repeats and incorporates by this reference each and every allegation set forth in paragraphs 1-28, inclusive.

30. Lopez is entitled pursuant to 17 U.S.C. § 504 to recover any and all profits of Defendants that are attributable to their acts of infringement.

31. Lopez is entitled pursuant to 17 U.S.C. § 504 to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

32. The amount of money due from Defendants to Lopez is unknown to Lopez and cannot be ascertained without a detailed accounting by Defendants of the precise number of units of infringing material offered for sale or license by Defendants as well as the pricing of those units.

PRAYER FOR RELIEF

WHEREFORE, Lopez respectfully requests judgment as follows:

- (1) That the Court enter a judgment against Defendants that they have:
 - (a) willfully infringed Lopez's rights in her federally registered Copyrighted drawings in violation of 17 U.S.C. § 501;
 - (b) injured the business reputation and business of Lopez by the acts and conducts set forth in this Complaint.

(2) That the Court issue injunctive relief against Defendants, and that Defendants, their officers, agents, representatives, servants, employees, attorneys, successors, assigns, affiliated companies, and all others in active concert or participation with Defendants, be enjoined and restrained from:

(a) imitating, copying, licensing, selling or making any other infringing use or infringing distribution of the drawings protected by the federal Copyright Registrations identified in Exhibits 1-8;

(b) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, licensing, offering for license, advertising, importing, promoting, or displaying any product bearing an image of any one of Lopez's federally copyrighted drawings;

(c) using any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Lopez's federally copyrighted drawings in connection with their manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, licensing, offering for license, import, advertisement, promotion, or display;

(d) using reproductions, counterfeits, copies or colorable imitations of Lopez's federally copyrighted drawings in the distribution, offering for distribution, circulating, sale, offering for sale, licensing, offering for license, advertising, importing, promoting, or displaying of any merchandise not authorized or licensed by Lopez;

(e) engaging in any other activity constituting an illegal distribution of any Lopez drawing and/or an infringement of Lopez's federally Copyrighted drawings;

(f) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.

(3) That the Court enter an order of impoundment pursuant to 17 U.S.C. §§ 503 and 509(a), and 28 U.S.C. § 1651(a) impounding all counterfeit and infringing copies of Lopez's federally copyrighted drawings and any related item including business records that are in Defendants' possession or under their control.

(4) That the Court enter an order declaring that Defendants hold in trust, as constructive trustees for the benefit of Lopez, their illegal profits obtained from their distribution of counterfeit and infringing goods bearing images of Lopez's federally copyrighted drawings.

(5) That the Court enter an order requiring Defendants to provide Lopez a full and complete accounting of all profits obtained from their marketing, sale, licensing and/or distribution of counterfeit and infringing drawings for which Lopez holds federal copyright registration, and of any other amounts due and owing to Lopez as a result of Defendants' illegal activities.

(6) That the Court order Defendants to pay Lopez's general, special, actual and statutory damages as follows:

(a) Lopez's damages and Defendants' profits pursuant to 17 U.S.C. § 504(b) or, alternatively, enhanced statutory damages pursuant to 17 U.S.C. § 504(c) and 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Lopez's copyrights.

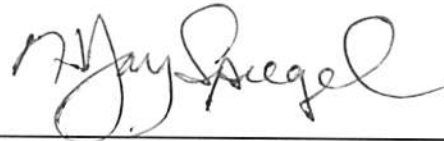
(7) That the Court order Defendants to pay to Lopez the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action.

(8) That the Court grant to Lopez such other and additional relief as is just and proper.
A jury trial is requested.

DATED this 21st day of April, 2011.

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES

A handwritten signature in cursive script, reading "H. Jay Spiegel". The signature is written in dark ink and is positioned above a horizontal line.

H. JAY SPIEGEL
Attorney for Plaintiff
Virginia Bar No. 20647

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 11
Mount Vernon, VA 22121
(703) 619-0101 - Phone
(703) 619-0110 - Facsimile
jayspiegel@aol.com - e-mail