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Can horror movie screenwriter win bid to reclaim attorney fees?

Question: Can the successful defendant in a copyright declaratory action involving the first “Friday the 13th” movie recover his attorneys’ fees under the Copyright Act?

Discussion: In 1980, Horror Inc.’s predecessor, Manny, Inc., hired Victor Miller to write a screenplay for what became the landmark horror film, “Friday the 13th.” Miller’ agreement with Manny, Inc. gave Manny Inc. the right to produce the movie. Forty years later, Miller served a notice under Section 203 of the Copyright Act. The section allows an author to terminate any type of transfer of a grant of copyright granted on or after Jan. 1, after 35 years, as long as the termination is served by: (1) the author; or (2) if the author is deceased, a person who is entitled to exercise the right.

When Horror Inc. received the termination notice, it filed a declaratory judgment action seeking a ruling that Miller did not have termination rights because he wrote the screenplay as a work for hire. The district court granted Miller’s motion for summary judgment. The Second Circuit Court of Appeals affirmed the judgment holding that the factors of em-



IP NEWS CHALLENGE

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ployment between Miller and Manny’s weighed in favor of Miller being an independent contractor who was entitled to terminate the grant of copyright.

Miller moved to recover his attorney’s fees as the prevailing party. The issue was whether a successful party in a declaratory judgment action could be defined as a prevailing party pursuant to Section 505 of the Copyright Act which allows for reimbursement of attorney’s fees.

The court held that Horror Inc. brought the declaratory judgment action expressly seeking a remedy under the Copyright Act. Horror Inc. asserted a claim requiring construction of a section of the Copyright Act. Although Section 505 is titled “Remedies for infringement: Costs and attorney’s fees,” the court held that the plain language of the statute cannot be undone by a heading. The court held that Horror Inc.’s action clearly arose under an interpretation of Section 203 of the Copyright Act. Therefore, Miller was entitled to attorneys’ fees as the prevailing party.

Answer: A successful defendant in a declaratory judgment case involving the interpretation of a section of the Copyright Act can recover attorneys’ fees as a prevailing party.

Case Cite: *Horror Inc. v. Miller*, No. 3:16-cv-1442 (SRU), 2022 U.S. Dist. LEXIS 173290 (D. Conn. Sept. 26, 2022)

Sur-Reply: The court awarded the vast majority of the fees incurred by Miller in the amount of \$886,564.88. The court did not award fees for Miller’s unsuccessful anti-SLAPP motion. But, still, the award wasn’t horrible.