

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

FILED
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2004 OCT 12 A 9:47

U.S. DISTRICT COURT
DISTRICT OF MASS.

MAGISTRATE JUDGE LRC

CHRISTOPHER FITZGERALD,

Plaintiff

vs.

CBS BROADCASTING, INC.,

Defendant

04 CV 12138 NG

CIVIL ACTION NO.

RECEIPT # 59207
AMOUNT \$ 150.00
SUMMONS ISSUED 1
LOCAL RULE 4.1 Y
WAIVER FORM Y
MCF ISSUED Y
BY DPTY. CLK. M.P.
DATE 10/12/04

COMPLAINT

This Action is brought under the Copyright Laws of the United States as amended, 17 U.S.C. Sections 101 et seq., to redress the infringement of a copyrighted photograph. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. Section 1338(a) and proper venue exists under 28 U.S.C. Section 1400(a).

1. Plaintiff, CHRISTOPHER FITZGERALD, is a professional photographer having an usual place of business at 8 High Street, North Grafton, Worcester County, Massachusetts.

2. Defendant, CBS BROADCASTING, INC. (hereinafter "CBS"), is a corporation duly organized by law, having an usual place of business at 1170 Soldier's Field Road, Boston, Suffolk County, Massachusetts. At all times material hereto, CBS has operated and continues to operate a television station in Boston under the call letters WBZ-TV, which is broadcast on Channel 4.

3. On or about January 6, 1995, Plaintiff photographed alleged Mafia racketeer, Stephen Flemmi. A copy of said photograph (the "Photograph") is attached hereto as "Exhibit A".

4. Plaintiff is the author of the Photograph and has at all times owned, and continues to own, all of the rights to the Photograph including the copyright hereto. The Photograph was registered with the Copyright Registration Office at the Library of Congress and was given Copyright Registration Number VAu 411-320, effective February 10, 1998. See the Certificate of Registration, a copy of which is attached hereto as "Exhibit B" and which is incorporated herein by reference.

5. CBS copied the Photograph without Plaintiff's permission or authority and broadcast the image on WBZ-TV, Channel 4, Boston, on numerous occasions including but not limited to June 24 and June 25, 2004. CBS also used the Photograph without Plaintiff's permission or authority on its website. As a result, Plaintiff's copyright has been infringed for which Plaintiff is entitled to his damages.

WHEREFORE, Plaintiff, CHRISTOPHER FITZGERALD, demands judgment against the Defendant, CBS BROADCASTING, INC., as follows:

a) That Defendant be required to deliver up for impoundment the original and all copies of Plaintiff's photographs in all forms whatsoever, which are in Defendant's possession or under its control, including all negatives, positives, transparencies, prints, video tapes, film, and other copies in all versions and media including printed copies, and copies in magnetic, electronic and digital files.

b) That Defendant be required to pay the Plaintiff such actual damages as Plaintiff has sustained in consequence of Defendant's infringement of Plaintiff's copyright and to account for all gains, profits and advantages derived by Defendant from its use and infringement of Plaintiff's copyrighted photograph;

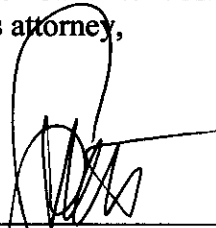
c) In lieu of Plaintiff's actual damages and Defendant's profits, that Defendant be required to pay to Plaintiff such Statutory Damages as to the Court shall appear just within the provisions of the Copyright Act in a sum not less than \$750 nor more than \$30,000, or if the Court finds that the infringements were committed willfully, such statutory damages as to the Court shall appear just within the provisions of the Copyright Act in a sum up to and including \$150,000 each;

d) That Defendant pay to Plaintiff his costs together with reasonable attorney's fees in an amount to be determined by this Court;

e) That Plaintiff have such other and further relief as is deemed to be just and proper.

PLAINTIFF CLAIMS TRIAL BY JURY

CHRISTOPHER FITZGERALD,
By his attorney,



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October 12, 2004