COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0046
April 24, 2024

Mary A. Oakes	*v.*	Heart of Gold Pageant System Inc., Angel Jameson
CLAIMANT		**RESPONDENTS**

ORDER DENYING REQUEST TO VACATE

On January 24, 2024, the Copyright Claims Board (Board) issued a Final Determination (Dkt. 55) following a Proposed Default Determination (Dkt. 48) and after none of the parties had responded to the Proposed Default Determination within their thirty-day window to do so. In the Final Determination, the Board found respondents Heart of Gold Pageant System Inc. ("Heart of Gold") and Angel Jameson ("Jameson") (collectively, "Respondents") liable for infringement of copyright in a work known as the Michalea Ad Image, found Heart of Gold liable for infringement of the copyright in a work known as the Abby Image, and dismissed the infringement claim regarding the Abby Image against Jameson without prejudice. It awarded Claimant Mary A. Oakes $4,500 in statutory damages.

On January 27, 2024, respondents Heart of Gold and Jameson filed a "Request for Dismissal" (Dkt, 58) that included two additional uploaded documents – a "Request to Vacate Final Determination" and a "Mary Oakes Timeline." The Request to Vacate Final Determination included that following statements: "I have every correspondence between us proving those photos were given to Heart of Gold for promotional use of the contestants and the organization. Mary Oakes also signed a photo release form as it is required to enter the pageant. As did Abigail's mother." It also stated that "I have also enclosed all the correspondence between us over the last 4 years," but no such correspondence was attached.

On February 1, 2024, the Copyright Claims Board (Board) issued an Order to File Documents (the "Order") in support of the Request to Vacate. (Dkt. 60) The Order gave Respondents until no later than Friday, February 9, 2024, to file "the specific documents referred to above; that is, actual releases showing permission to use the two images at issue in this case and correspondence showing such permission." It also provided that Claimant could respond within 30 days after the submission of any documents by Respondents.

On February 9, 2024, Jameson filed 21 documents. (Dkt.61-Dkt.81) However, none of her filings included any releases showing permission to use the two images at issue in this proceeding. Some of the filings included messages between Jameson and Claimant or between Jameson and the mother of the model featured in one of the two images at issue, and some of those messages appear to relate to images that may have been the images at issue in this proceeding. The messages revealed that the parties had a preexisting and sometimes cordial relationship that Claimant had not revealed in any of her filings or testimony. Had those messages been submitted earlier in the

proceeding, they might have prompted further inquiries regarding the nature of the parties' relationship and their course of dealing relating to use of the images. However, neither the messages nor any of the other documents filed by Jameson prove that her use of the images was done with the permission of the copyright owner or was otherwise noninfringing.

The Board may vacate a Final Determination "in the interests of justice." 17 U.S.C. § 1506(u)(4); 37 C.F.R. §227.5(c). As a definition for "interests of justice" is not set forth in the CASE Act, the Board's governing statute, the Board considers the case law governing the analogous situation in the federal courts. Rule 60(b) of the Federal Rules of Civil Procedure[1] permits a court "on motion and just terms," to relieve a party from a final judgment, order or proceeding, including a final default judgment.[2] It enumerates five specific reasons why such relief might be granted, none of which are applicable here. *See* Fed.R.Civ.Pr. 60(b)(1)-(5). However, a sixth subparagraph provides that the court may grant such relief for "any other reason that justifies relief." Fed.R.Civ.Pr. 60(b)(6). That provision, an amendment to the original rule, was added to "ves[t] power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," *Klapprott v. United States,* 335 U.S. 601, 615 (1949). Relief under Rule 60(b)(6) "will be granted only if extraordinary circumstances are present." *Batts v. Tow-Motor Forklift Co.,* 66 F.3d 743, 747 (5th Cir. 1995). *See also Ackermann v. United States,* 340 U.S. 193, 202 (1950). "Rule 60(b)(6) requires a showing of 'manifest injustice' and will not be used to relieve a party from the 'free, calculated, and deliberate choices he has made.'" *Yesh Music v. Lakewood Church,* 727 F.3d 356, 363 (5th Cir. 2013).[3]

With those principles in mind, the Board cannot conclude that it is in the interests of justice to vacate the Final Determination. Unlike someone who was unaware of the proceeding (whether through their own fault or not), Jameson was not only aware of the proceeding, but she had many communications with CCB staff, in which she made clear that she was affirmatively refusing to participate in the proceedings. Jameson therefore had multiple opportunities to participate, at every stage of this proceeding, from the time she was served right up to the last hearing, and while she was invited to participate on numerous occasions, she consistently declined the opportunity. See Final Determination at 3-5. The CASE Act and CCB regulations offer respondents, including respondents who have defaulted, numerous opportunities to defend against claims, 37 C.F.R. § 227 including an opportunity to appear, for the first time, following issuance of a proposed default determination and submit written testimony including evidence and legal argument. *See* 37 C.F.R. § 227.4. Had Jameson responded to the Proposed Default Determination within 30 days, the Board would have considered any evidence and arguments she presented and

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[1] The Federal Rules of Civil Procedure are the procedural rules for cases in the federal district courts.
[2] Rule 55(c) of the Federal Rules of Civil Procedure provides that a court "may set aside a final default judgment under Rule 60(b)."
[3] One could imagine that an "interests of justice" standard might also be broad enough to include the subject matter of Rule 60(b)(1) – relief from a judgment due to "mistake, inadvertence, surprise, or excusable neglect." Even if the Rule 60(b)(1) standard were applicable, Respondents have failed to show that any of the grounds stated in that paragraph apply here. Respondents' failure to participate in the proceeding was not a mistake, nor was it inadvertent, a "surprise," or based on excusable neglect. Rather, Respondents made a conscious decision not to participate in the proceeding, and therefore would be precluded from relief under Rule 60(b)(1). *Cashner v. Freedom Stores, Inc.,* 98 F.3d 572, 577 (10th Cir. 1996).

could have amended that determination. But instead of waiting until the last possible minute, Jameson waited until *after* the last possible minute, raising her objections only after the determination became final. And those objections were too little, too late.

Had Jameson's evidence in support of vacating the Final Determination conformed to the requirement in the Order to File Documents that she submit "actual releases showing permission to use the two images at issue in this case and correspondence showing such permission" and if that evidence had been sufficient to prove that Respondents had the copyright owner's permission to reproduce and publicly display Claimant's copyrighted works in a manner consistent with the evidence before the Board, a decision to vacate the Final Determination might have been justified. That did not happen.

The Board concludes that it is not in the interests of justice to vacate the Final Determination and denies Respondents' Request to Vacate.

Copyright Claims Board