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'Shake It Off' Case Against Taylor Swift Heads To 9th Circ.

By **Bill Donahue**

Law360 (September 19, 2018, 5:10 PM EDT) -- Two songwriters who unsuccessfully sued Taylor Swift for copyright infringement over "Shake It Off" are taking their case to the Ninth Circuit, at one point quoting a judge that told the pop star to "be careful what you wish for."

Sean Hall and Nathan Butler, who sued the singer-songwriter last year on accusations that she lifted lyrics from their 2001 song "Playas Gon' Play," filed an opening appellate brief Monday, telling the appeals court that a trial judge had been too swift to **dismiss the case**.

"Taylor Swift, as uber-successful of an artist as she is, chose to disregard appellants' authorship rights when she used their four-part lyrical sequence ... for the chorus in her mega-hit Shake It Off," the two songwriters wrote.

"The question of whether the four-part sequence of song lyrics at issue is sufficiently original to deserve copyright protection requires subjective value judgment that belongs to a jury," Hall and Butler wrote.

The brief made a point to repeatedly quote U.S. District Judge Michael W. Fitzgerald — the judge who first dismissed Hall and Butler's case, but then **pointedly refused** to punish them for bringing it.

"There are very few recording artists, if any, who have a greater interest than Ms. Swift in a robust regime of copyright law," Judge Fitzgerald wrote at the time. "Be careful what you wish for."

On Monday, the two songwriters argued that the judge's colorful ruling — he also said he'd award fees to Hall and Butler before he'd award them to Swift — "certainly suggests that the dismissal below was a close call."

Hall and Butler sued Swift in September, claiming the star had infringed the copyright to "Playas Gon' Play" — released in 2001 by the group 3LW — with "Shake It Off."

The old song featured the lines "playas, they gonna play" and "haters, they gonna hate"; Swift's hit featured the line "Cause the players gonna play, play, play, play, play and the haters gonna hate, hate, hate, hate, hate."

In February, Fitzgerald sided decisively with Swift, ruling that the quick phrases in "Playas" were not protected by copyright law.

"The allegedly infringed lyrics are short phrases that lack the modicum of originality and creativity required for copyright protection," the judge said. "Accordingly, if there was copying, it was only of unprotected elements of 'Playas Gon' Play.'"

Swift then asked for an award of \$76,000 in attorneys' fees, which Fitzgerald denied in April — the order in which "careful what you wish for" appeared.

A spokeswoman for Swift declined to comment Wednesday.

The plaintiffs are represented by Gerard P. Fox, Lauren M. Greene and Marina V. Bogorad of Gerard Fox Law PC.

The defendants are represented by Peter J. Anderson of the Law Offices of Peter J. Anderson APC.

The suit is Sean Hall et al. v. Taylor Swift et al., case number 18-55426, at the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Alyssa Miller.

Update: This story has been updated with new counsel information.

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