



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Taylor Swift Loses Bid To Escape 'Shake It Off' Lyrics Case

By **Bill Donahue**

Law360 (September 2, 2020, 10:41 PM EDT) -- A year after being overturned by the Ninth Circuit, a California federal judge on Wednesday refused to toss out a lawsuit accusing Taylor Swift of ripping off lyrics for "Shake It Off," sending the case toward more litigation and an eventual trial.

Siding with two songwriters who sued the pop star, U.S. District Judge Michael W. Fitzgerald denied Swift's motion to dismiss the case on the grounds that the allegedly stolen lyrics — "playas, they gonna play" and "haters, they gonna hate" — were not copyrightable.

Specifically, the judge said that it was too early to rule that the lyrics were barred from protection by the so-called merger doctrine, the concept that when there is only a limited number of ways to express an idea, those expressions can't be locked up under copyright law.

"At this stage the court cannot conclude from the complaint alone that merger applies," Judge Fitzgerald wrote. "Defendants offer no authority — legal or from the pleadings — that the idea underlying plaintiffs' lyrics can only be expressed in one way."

Wednesday's ruling went in favor of songwriters Sean Hall and Nathan Butler, who sued Swift in September 2017 on accusations that the star infringed the copyright to their "Playas Gon' Play" — released in 2001 by the group 3LW — with her 2014 smash hit.

The 2001 song featured the lines "playas, they gonna play" and "haters, they gonna hate." Swift's song features the line "Cause the players gonna play, play, play, play, play and the haters gonna hate, hate, hate, hate, hate."

In 2018, Judge Fitzgerald **dismissed the case** on the grounds that the shared lyrics were too short and unoriginal for copyright protection. But last year, the Ninth Circuit **overturned that ruling**, saying that having enough "originality" for a copyright is a low bar and that Hall and Butler had cleared it.

Back in district court, Swift **again pushed to dismiss** the case, arguing that the allegedly infringed lyrics were so simple that they had merged with the basic, unprotectable ideas they were expressing.

But on Wednesday, Judge Fitzgerald said it was not "abundantly clear from the complaint that there are sufficiently few means of expressing this idea" for the merger doctrine to apply.

Swift had also argued that the case should be dismissed because Hall and Butler's song merely combined a small number of public-domain elements, but Judge Fitzgerald said they had alleged enough "creative choices" to survive an early-stage dismissal motion.

"Plaintiffs plausibly argue that there are at least two, and perhaps as many as nine, creative choices that defendants copied here," the judge wrote. "Whether that is true is subject to further discovery, dispositive motion practice, and perhaps fact-finding at trial; it cannot be resolved at this stage."

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

Swift and the other defendants are represented by Peter J. Anderson of Davis Wright Tremaine LLP.

The case is Hallet et al. v. Swift et al., case number 2:17-cv-06882, in the U.S. District Court for the Central District of California.

--Editing by Jack Karp.

All Content © 2003-2020, Portfolio Media, Inc.