

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

MARGARET BARTON DRIGGS

PLAINTIFF

VS.

CIVIL ACTION NO.: 3:05-CV-48BN

GLORIA JACKSON WINTERS

DEFENDANT

OPINION AND ORDER

This cause is before the Court on Plaintiff's Motion for Summary Judgment and Permanent Injunction. Having considered the Motion, to which Defendant failed to respond, the Court finds that it is well taken and should be granted.<sup>1</sup>

**Factual Background and Procedural History**

In 1992, Plaintiff Margaret Driggs wrote a play entitled *Sweet Chariot* ("the play") which is based on the life of Harriet Tubman. Plaintiff successfully copyrighted the play in 1993. See Exhibit "A" and "B" to Original Complaint. Defendant Gloria Winters played the role of Tubman in a July 1994 rendition of the play at the

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<sup>1</sup> Because Defendant is proceeding in this case *pro se*, her pleadings must be liberally construed. Pena v. United States of America, 122 F.3d 3, 4 (5th Cir. 1997). The Court also notes that ordinarily, a motion may be granted as unopposed if a party fails to submit a response to the motion. Rule 7.2(C)(2) of the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi. However, if the motion in question is for summary judgment, a court must consider the motion on the merits, regardless of whether the opposing party responds. Id. Under the standard set forth in Local Rule 7.2(C)(2), the Court must consider Plaintiff's Motion for Summary Judgment on the merits.

University of Mississippi. Consequently, Defendant received a script of the play.

Since receiving the script in 1994, Defendant has admittedly performed the play, or a version of it, on numerous occasions at various locations. Defendant alleges that after the 1994 performance, Driggs "asked me to 'use her play to tell Harriet's story' and to '[p]ut IT out there.'" Defendant's Answer, p. 1. Plaintiff claims that since the July 1994 performance she has never given Defendant permission to present the play. Further, Plaintiff contacted Defendant in 2003 and demanded that Defendant no longer perform the play. Plaintiff, through her attorney, also wrote Defendant in 2004 regarding the alleged copyright infringement, but Defendant admittedly disregarded the letter.

On January 20, 2005, Plaintiff initiated this action asserting a copy right infringement claim. She has since asked for and received a Temporary Restraining Order [February 4, 2005, docket entry no. 8] and Preliminary Injunction [February 18, 2005, docket entry no. 10] from the Court enjoining Defendant from further using, producing or benefitting from the play. Plaintiff now moves for summary judgment on the merits of her claim. Plaintiff does not seek monetary damages but only request injunctive relief.

## **II. Summary Judgment Standard**

Rule 56 of the Federal Rules of Civil Procedure provides, in relevant part, that summary judgment "shall be rendered forthwith

if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The United States Supreme Court has held that this language "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a sufficient showing to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see also, Moore v. Mississippi Valley State Univ., 871 F.2d 545, 549 (5th Cir. 1989); Washington v. Armstrong World Indus., 839 F.2d 1121, 1122 (5th Cir. 1988).

The party moving for summary judgment bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record in the case which it believes demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The movant need not, however, support the motion with materials that negate the opponent's claim. Id. As to issues on which the non-moving party has the burden of proof at trial, the moving party need only point to portions of the record that demonstrate an absence of evidence to support the non-moving party's claim. Id. at 323-24. The non-moving party must then go beyond the pleadings and designate

"specific facts showing that there is a genuine issue for trial."  
Id. at 324.

Summary judgment can be granted only if everything in the record demonstrates that no genuine issue of material fact exists. It is improper for the district court to "resolve factual disputes by weighing conflicting evidence, . . . since it is the province of the jury to assess the probative value of the evidence." Kennett-Murray Corp. v. Bone, 622 F.2d 887, 892 (5th Cir. 1980). Summary judgment is also improper where the court merely believes it unlikely that the non-moving party will prevail at trial. National Screen Serv. Corp. v. Poster Exchange, Inc., 305 F.2d 647, 651 (5th Cir. 1962).

### **III. Analysis**

#### **III.A. Summary Judgment on the Merits**

For Plaintiff to establish copyright infringement, she must prove "(1) ownership of a valid copyright, and (2) copying [by Defendant] of constituent elements of the work that are original." Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991).

A timely obtained certificate of registration is *prima facie* evidence of ownership of a valid copyright. General Universal Systems, Inc. v. Lee, 379 F.3d 131, 141 (5th Cir. 2004). Plaintiff has provided the Court with the Registrar of Copyright certificates which give her exclusive rights in the play. See Exhibit "A" and

"B" of Original Complaint. There is no evidence in the record that disputes the validity of these documents. Thus, there is no genuine issue of fact as to Plaintiff's ownership of a valid copyright for the play.

The Court also finds that there is no genuine issue of fact regarding Defendant's infringement or "copying" of Plaintiff's copyrighted work. To meet the copying prong, Plaintiff must first prove that Defendant "actually used the copyrighted material to create h[er] own work." Id. Second, Plaintiff must establish legally actionable infringement by demonstrating that Defendant's performance of the play was "substantially similar" to Plaintiff's original work. Id. In the letter written by Defendant on February 10, 2005, which has been construed as Defendant's Answer, Defendant admits that she had access to and performed a version of *Sweet Chariot* on many occasions between 1994 and 2004. See Defendant's Answer, p 2-3. Although Defendant alleges that she originally had permission from Plaintiff to perform the Play, Defendant nonetheless admits to using the play after Plaintiff notified her in 2003 that she did not have permission. Id. Moreover, one of Defendant's performances of her own version of the play was recorded by a private investigator. A comparison of the transcript of that performance and Plaintiff's original reveals the same plot, the same one act format, the same sequence of events, and much of

the same phraseology. Defendant's version is clearly "substantially similar" to the original.

Accordingly, the Court finds that there are no genuine issues of disputed fact and that Plaintiff is entitled to judgment as a matter of law.

### **III.B. Permanent Injunction**

As previously noted, the Court issued a Preliminary Injunction in this matter on February 18, 2005, and Plaintiff now moves the Court to convert that injunction into a Permanent Injunction. See Order Granting Motion for Preliminary Injunction (docket entry no. 10). The only difference between the requirements of a preliminary injunction and a permanent injunction is that the moving party must actually prevail on the merits to receive a permanent injunction. Amoco Prod. Co. v. Village of Gamball, 480 U.S. 531, 546 n. 12 (1987). Because Plaintiff has succeeded on the merits, she is now entitled to a Permanent Injunction. Thus, the Court will enter a Permanent Injunction consistent with the terms of the Preliminary Injunction.<sup>2</sup>

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<sup>2</sup> The Court notes that Plaintiff includes an additional request in her Brief that is in neither the Motion before the Court nor the Preliminary Injunction. In the Brief, Plaintiff asks that Defendant also be ordered "[t]o surrender up for impounding all scripts of *Sweet Chariot*, all programs, brochures, advertisements, or similar material that contains any depiction of a scene or reading of *Sweet Chariot*." Memorandum of Authorities in Support of Plaintiff's Motion for Summary Judgment and Permanent Injunction, p. 13. Because Plaintiff has not demonstrated why this additional relief is necessary, the Court will not include it in the Permanent Injunction.

### III. Conclusion

Based on the holdings presented above:

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgement and Permanent Injunction [docket entry no. 21] is well taken and is hereby granted.

IT IS FURTHER ORDERED that Defendant Gloria Jackson Winters, and all persons acting in concert or participation with her, shall be permanently enjoined:

1. From presenting any future production or dramatization of the play *Sweet Chariot* or any unauthorized derivative version thereof;
2. From otherwise infringing Driggs' copyrights in the play *Sweet Chariot*;
3. From advertising any performance of the play *Sweet Chariot* or any unauthorized derivative version thereof;
4. From competing unfairly with Driggs regarding the play *Sweet Chariot*;
5. From doing any act or thing that might tend to damage the business reputation of Driggs regarding the play *Sweet Chariot*; and
6. From benefitting from the misuse, misappropriation, pirating, and theft of the dramatic rights of Driggs in and to the literary and dramatic work of *Sweet Chariot*.

IT IS FURTHER ORDERED that a Final Judgment will be entered reflecting the final resolution of this matter.

SO ORDERED this the 17th day of October, 2005.

s/ William H. Barbour, Jr.  
UNITED STATES DISTRICT JUDGE