

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re

Case No. 6:01-bk-1966-6j7  
Chapter 11

SEMINOLE WALLS & CEILINGS CORP.,

Debtor.

CARLA P. MUSSELMAN, CHAPTER 7  
TRUSTEE FOR THE ESTATE OF  
SEMINOLE WALLS & CEILINGS CORP.,

Plaintiff,

v.

Adv. Pro. No. 6:04-ap-00077-KSJ

DEBBIE JASGUR, JOSEPH JASGUR,  
ROBERT L. FOX, DARTLIN J. AFRICH,  
AFRICH MAINTENANCE, INC., AFRICH  
MANAGEMENT & INVESTMENT, INC.,  
VINTAGE PARTNERS, INC., BRADLEY  
E. WHITTLE, THE FUNDING  
SOLUTIONS, INC., JOSEPH YARON,  
PITA CORPORATION, and PAUL PHILIPSON,

Defendants.

ORDER DENYING  
JOSEPH JASGUR'S AND PAUL PHILIPSON'S  
REQUEST FOR JUDICIAL NOTICE

This adversary proceeding came on for consideration on Joseph Jasgur's and Paul Philipson's Request for Judicial Notice (the "Request") (Doc. No. 240) and on Co-Defendants', Dartlin J. Africh, Africh Maintenance, Inc., and Africh Management & Investment, Inc.'s, Response (the "Response") (Doc. No. 246). In the Request, Jasgur and Philipson ask the Court to take judicial notice that certain photographs are jointly registered in Jasgur's and Philipson's names in the United States Copyright Office and that other copyrights are registered in Jasgur's name alone. Jasgur and Philipson also ask the Court to take judicial notice "of the lack of any other registrations or other written instruments of assignment of the copyrights and/or intellectual property at issue in this matter to any of the other parties to this litigation." In the Response, Co-Defendants argue that exactly who owns the photographs and copyrights is a central, disputed issue in this adversary proceeding and that, therefore, the Court cannot take judicial notice as Jasgur and Philipson request.

Judicial notice of a particular fact is appropriate if the fact is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. In order for a fact to be judicially noticed under Rule 201(b), indisputability is a prerequisite." U.S. v. Jones, 29 F.3d 1549, 1553 (11<sup>th</sup> Cir. 1994) (citing 21 C. Wright & K. Graham, *Federal Practice and Procedure: Evidence* § 5104 at 485 (1977 & Supp.1994)). "Since the effect of taking judicial notice under Rule 201 is to preclude a party from introducing contrary evidence and in effect, directing a verdict against him as to the fact noticed, the fact must be one that only an unreasonable person would insist on disputing." Jones, 29 F.3d at 1553 (internal citation omitted).

Jasgur and Philipson argue that the copyright information maintained by the United States Copyright Office is a matter of official public record and that the accuracy of the information concerning who is, or is not, registered as a copyright owner cannot be reasonably questioned. In response, the Co-Defendants argue that other documents/written instruments exist which do render the issue of copyright ownership subject to a legitimate dispute. Specifically, the Co-Defendants point to a written assignment, recorded with the United States Copyright Office, and a written exclusive license agreement, which, they argue, transferred any ownership rights of Jasgur and/or Philipson pursuant to 17 U.S.C. § 101. That statute provides in relevant part as follows:

A "transfer of copyright ownership" is an **assignment**, mortgage, **exclusive license**, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights compromised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license. (emphasis added).

Neither Jasgur nor Philipson separately acknowledged or referenced any purported assignment or license agreement in the Request. As such, the Court's determination of the validity and enforceability of any such instruments could substantially effect the ultimate determination of the central issue in this adversary proceeding—who legally owns the various copyright interests. Therefore, because the ownership of these interests is the dominant issue and because the database Jasgur and Philipson ask the Court to rely on is complex and subject to interpretation, the Court cannot find judicial notice is appropriate insofar as the parties have a concrete dispute between them as to the

import of the records contained in the database. Jasgur and Philipson have failed to establish the key element for judicial notice—indisputability.

Accordingly, it is

ORDERED:

1. The Request (Doc. No. 240) is denied.
2. The parties must present evidence on the ownership of the various copyrights at trial and may not rely on judicial notice.

DONE AND ORDERED in Orlando, Florida, this 15th day of August, 2006.

/s/ Karen S. Jennemann  
KAREN S. JENNEMANN  
United States Bankruptcy Judge