



Kelley Drye Files Amicus Brief for U.S. Supreme Court Review of Montz Case

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To clarify the scope of federal Copyright Act preemption, on September 6, 2011, Kelley Drye & Warren LLP filed an amicus brief, asking the U.S. Supreme Court to review the 9th Circuit's decision in *Montz v. Pilgrim Films & Television, Inc.* Kelley Drye represented amici parties, California Broadcasters Association, CBS Broadcasting Inc., CBS Films Inc., CBS Studios Inc., Showtime Networks Inc., and Summit Entertainment, LLC. The amici parties have a compelling and unique interest in the issues raised by *Montz* in that they are regularly involved in the litigation of copyright and idea submission claims. They operate in an environment where uncertainty in the application of copyright law could subject them to all sorts of specious lawsuits. The amici parties argue that the federal copyright law pre-empts individual state claims arising from the submission of ideas in screenplay treatments, videos and other forms of tangible media. They asserted idea submission claims should be decided under a uniform, consistent, federal law, not different state laws that splinter decisions into multiple, uncertain and contradictory outcomes.

In the underlying case, plaintiffs, Larry Montz, a parapsychologist, and Daena Smoller, a publicist, claimed they came up with a reality TV show idea for investigation of paranormal activity. They claimed to have presented screenplays, videos and other material to NBC Universal and the Sci-Fi Channel (now the Syfy Channel). NBC was allegedly not interested. The plaintiffs claimed that NBC then took this idea and subsequently partnered with another team to produce a series, *Ghost Hunters*, in which Jason Hawes leads a team of investigators across the country to study paranormal activity. Montz and Smoller filed a claim against the TV production company, NBC and others, claiming breach of implied contract and breach of confidence, under California state laws.

The District Court ruled in favor of the defendants, finding federal Copyright law preempted the plaintiffs' claims. However, the U.S. Court of Appeals for the Ninth Circuit reversed and held that the plaintiffs' state law claims for breach of implied contract and breach of confidence arising from the submission of ideas were not preempted. The court found each claim requires an extra element that makes it qualitatively different from and outside the scope of a copyright claim. The majority opinion reaffirmed the court's prior decision in *Grosso v. Miramax*.

The defendants in *Montz* filed an appeal to the U.S. Supreme Court and Kelley Drye filed an amicus brief which argued that the Ninth Circuit decision in *Montz* (1) does not comport with the congressional intent of the federal copyright law; and (2) inhibits innovation and free expression in the entertainment industry by solidifying the ad hoc, unpredictable nature of idea submission litigation in state courts.

Kelley Drye argued the purpose of federal copyright preemption is to create national uniformity regarding authors' rights, to assure authors the right to their original expression and also encourages others to build freely upon ideas and information. The ultimate purpose of copyright law is to enrich

the general public through the encouragement of and access to creative works. With the Copyright Act §301, Congress expressly provided that any state rights within the scope of federal copyright law are preempted. This avoids the difficulties of determining and enforcing an author's rights under different laws, in separate courts of various states.

Kelley Drye also argued that uncertainty in the preemption doctrine chills the innovation and creativity in the entertainment industry. The Kelley Drye brief noted, "The problem begins from the moment an entity, such as an Amici, opens its mail."

Kelley Drye stated the current chaotic legal climate in idea submission law creates challenges in advising entertainment companies about their rights and obligations. Without greater clarity in the applicable laws, studios need to take stringent precautions against creative works submitted outside a bureaucratic, filtered, over-lawyered submission process, to protect themselves from potential liability at the risk of limiting the pool of unexplored talent, ultimately undermining the First Amendment and hurting the public interest.