

Kelley Drye Wins Appeal of Idea Submission Case Brought Against ABC Based On "Lost" Television Series

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On March 8, 2013, the California Court of Appeal issued its opinion regarding an idea theft claim over the TV show "LOST." The court upheld an order granting summary judgment in favor of ABC. Kelley Drye represented ABC and argued the appeal.

The Spinner case has a long history, consisting of three Los Angeles Superior Court proceedings, a federal court case, and two proceedings in the Writers Guild of America, West. Five judges presided over the case during the course of the eight year dispute.

Anthony Spinner, an Emmy nominated writer best known for writing for TV series such as "Beretta" and "The Man from U.N.C.L.E." in the 1970's, claimed his script entitled "LOST" was used in the creation of ABC's hit series "LOST." Spinner's script is a story about a group of Olympic athletes who survive a plane crash in the Himalayas and discover a portal to a prehistoric world populated by dinosaurs and prehistoric, tribal humans. Unlike most other idea submission cases, there was a written contact between Spinner and ABC for Spinner's '70's script, which presented a unique circumstance in the defense of the case. "H.R. Puff N' Stuff" and "Land of the Lost" producers Sid and Marty Krofft bought the script from Spinner in 1976 and sent it to ABC for development. Ultimately, Spinner's project fell out of development and was forgotten. Although Spinner had already sold his script once, he used the WGA MBA "separated rights" reversion provisions to argue that he had standing to assert his claims for a second payment. The problem Spinner had, both in the Guild and in court, was that there was no connection between his script and ABC's successful television series. ABC proved that no one involved with the creation of the "LOST" Series had any contact with Spinner or familiarity with his script - thus no access. In addition, ABC amassed a mountain of evidence detailing the independent creation of "LOST" by ABC executive Lloyd Braun and acclaimed producers J.J. Abrams and Damon Lindelof, among others.

Ultimately, justice was served in the final Superior Court case when Kelley Drye moved for summary judgment on the ground of lack of use of Spinner's idea/script - specifically, there was no reasonable access and no substantial similarity between Spinner's work and the "LOST" TV show to raise an inference of use, and even if there was an inference of use, that inference was dispelled by ABC's evidence of independent creation. The trial court granted summary judgment on the grounds of lack of access and independent creation, which the California Court of Appeal affirmed on March 8, 2013.

The ruling is significant because the court provides much-needed clarity with respect to defending idea theft cases on the grounds of lack of access and independent creation.

First, with respect to access, Kelley Drye asserted that the "bare corporate receipt" doctrine that is applied in the copyright context (see, e.g., *Meta-Film Assocs., Inc. v. MCA, Inc.*) is equally pertinent in

the idea theft context. No California state court has acknowledged this doctrine in a published case in the idea theft context. The court applied the doctrine to hold that plaintiff's evidence of access was insufficient as a matter of law.

Second, the court rejected Spinner's argument that independent creation in idea theft cases must occur prior to the alleged access. Here, independent creation occurred after the alleged access (although the alleged access to Spinner's work was by ABC executives who had no involvement with "LOST"). There are no published California cases with similar fact patterns.

Although the case is currently unpublished, there is a possibility that a request for publication may be made pursuant to the California Rules of Court.