

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT J. LANG, NOBORU MIYAJIMA, AND :
JASON KU, :

Plaintiffs, :

-v- :

SARAH MORRIS, :

Defendant. :
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11 Civ. 8821 (KBF)

ORDER

KATHERINE B. FORREST, District Judge:

Having reviewed the parties' submissions in support of their cross motions for summary judgment, the Court orders as follows:

1. The motion by plaintiffs for summary judgment (ECF No. 35) is DENIED.

The question of fair use necessarily requires a fact finder to balance a number of factors. On the record in this case, the factual disputes regarding fair use must be resolved by the fact finder at trial.

2. The motion by defendant for summary judgment (ECF No. 33) is also

DENIED. The law is clear, and there is no triable issue of fact, that plaintiff Lang is the beneficial owner of the copyrighted works at issue.

As such, he is entitled to bring suit. The Court also finds that there are numerous bases upon which to find the action timely brought, including acts of infringement with respect to the works that fall within the statutory period, or questions relating to whether later discovery was

reasonable (questions left to the finder of fact at trial). In any event, the Court declines to find the action untimely on a motion for summary judgment given the many fact issues in this case. (The Court rejects a "hard date" of initial sale of all but four works as the appropriate date for summary judgment on this record. The record demonstrates issues regarding possible continuing acts and therefore more recent acts as to some or all of the works.) As stated with respect to plaintiffs' motion, there are numerous questions of fact as to fair use that, in light of the current record, raise triable issues.

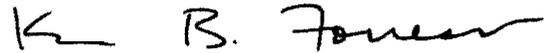
3. Discovery in this matter is closed. The extensive submissions on summary judgment suggest that the parties should be able to prepare for trial in short order. Accordingly, the following schedule shall govern the remainder of this case:

- The parties shall appear for a status conference on Wednesday, February 13, 2013, at 1:30 p.m.
- All joint pre-trial materials shall be submitted to this Court in accordance with the Court's Individual Rules of Practice in Civil Cases not later than March 15, 2013.
- A Final Pre-Trial Conference shall be held on Tuesday, April 2, 2013, at 1:00 p.m.
- A four day jury trial on all issues triable by a jury, is scheduled for April 8, 2013.

The Clerk of Court is directed to close the motions at ECF No. 33 and 35.

SO ORDERED:

Dated: New York, New York
February 1, 2013



KATHERINE B. FORREST
United States District Judge