

# IYC Defeats Motion FOR \$1.79 MILLION in Attorney's Fees

## *Preface*

By way of brief background, in 2003 Plaintiff BUC International sued in Federal Court on its claim of copyright infringement against MLS Solutions and International Yacht Council. After a 10-day trial it received an award of \$1.69 million dollars which was far less than the \$56 million sought. The appellate court would thereafter cut the award by more than 50% to \$800,000.00. After pursuing the case for over six years, Plaintiff recently sought to have Defendants MLS Solutions and International Yacht Council pay the entirety of Plaintiff's attorney fees and costs in the claimed amount of \$1.79 million dollars. Federal Magistrate Judge Rosenbaum recently, after hearing arguments of counsel on September 3, 2008, ruled on the applicability of such an award, and effectively denied BUC's Motion effectively in its entirety.

## *Introduction*

Although the "American Rule" usually does not allow a prevailing party in litigation to collect its own attorney fees from the losing party, an exception lies when there is explicit statutory authority to do so. Here, the statute relied on by Plaintiff is the Copyright Act, 17 U.S.C. §505. The Court found that Plaintiff had not foregone its eligibility for attorney fees by electing to receive actual damages in lieu of statutory damages. However, the Court closely analyzed the standards set forth by the U.S. Supreme Court in the case of *Fogerty v. Fantasy, Inc.* to decide the issue. The factors considered are: frivolousness, motivation, objective unreasonableness, and the need to advance considerations of compensation and deterrence. The court noted, in the preface to their analysis, that "courts must be careful to award fees only where such an award is faithful to the purposes of the Copyright Act."

## *Analysis of Frivolousness & Objective Unreasonableness Analysis*

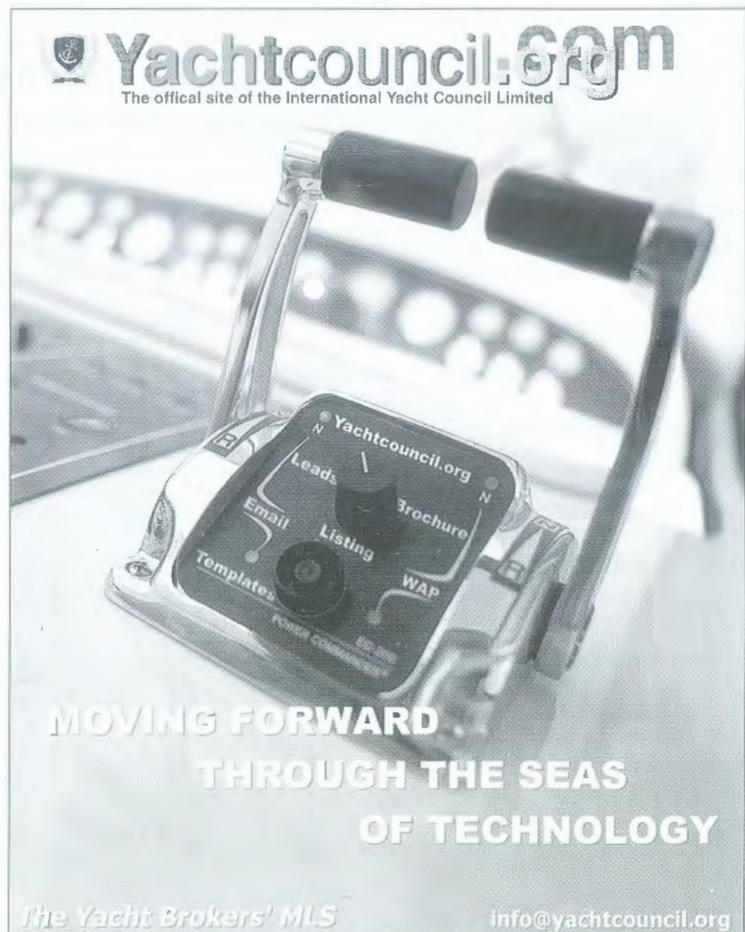
Plaintiff contended that Defendant's positions with respect to the 1464 copyright-infringed vessel listings were objectively unreasonable. The Court ruled for Defendants, and found that the clarity of the law with respect to the losing party's position at the time they pressed its argument is a barometer for determining the reasonableness of Defendant's defense. The court analyzed Defendants contended arguments one by one, and determined that the Eleventh Circuit's reliance on the jury's resolution of issues raised by Defendants' defenses demonstrates that reasonable people could disagree as to whether Defendants infringed Plaintiff's copyrights, and, thus, the defenses were not either objectively unreasonable or frivolous. The Court also pointed to the Jury's decision to award the lowest possible statutory damages to Plaintiff (\$750 per violation, out of a range of \$750-\$30,000) as indicative of the fact that the factual questions of the case were close and that the defenses raised were reasonable. Note: on a limited issue, having to do with Defendants' objections to the

Court's copyright instruction to the jury regarding the "substantial similarity" standard, the Court deemed Defendants' conduct objectively unreasonable. The Court decided that this limited situation, and Defendants' continued advocacy of this issue on appeal, does support an award of Plaintiff's attorney fees, with any award limited to actual fees incurred by Plaintiff to defend this single issue which was first raised on appeal.

## *Conclusion*

Therefore, the Court substantially denied BUC's Motion for Attorney Fees and granted only one tiny aspect in BUC's favor. By all measure, a great victory for MLS Solutions and the IYC.

Respectfully submitted,  
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