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## 7th Circ. Affirms Elton John Win In 'Nikita' Copyright Row

By **David McAfee**

Law360, New York (July 17, 2013, 4:21 PM ET) -- The Seventh Circuit on Wednesday shot down a bid by a South African lyricist to revive a copyright suit accusing Elton John of stealing the words to the song "Nikita," holding that the two songs aren't substantially similar as a matter of law.

The decision comes after photojournalist and aspiring songwriter Guy Hobbs **told the Seventh Circuit** in March that an Illinois judge's dismissal relied on a Seventh Circuit decision that contradicted U.S. Supreme Court precedent and effectively eliminated copyright protection. Hobbs argued that *Peters v. West*, the 2011 Seventh Circuit ruling cited by U.S. District Judge Amy J. St. Eve in her October dismissal, defies Supreme Court precedent establishing copyright protection when an author creates an original work by arranging unprotected elements.

But the three-judge appellate panel on Wednesday affirmed Judge St. Eve's decision in favor of John, his writing partner Bernie Taupin and publisher Big Pig Music, saying that Hobbs' song "Natasha" and Elton John's "Nikita" aren't similar enough to support the copyright infringement claim.

"We agree with the district court that 'Natasha' and 'Nikita' simply tell different stories, and are separated by much more than small cosmetic differences," Circuit Judge Daniel A. Manion wrote in the opinion. "We conclude that as a matter of law 'Natasha' and 'Nikita' are not substantially similar because they do not share enough unique features to give rise to a breach of the duty not to copy another's work."

Hobbs, a resident of Cape Town, South Africa, **brought suit** in April 2012, saying he based the lyrics for the unpublished 1982 song "Natasha" on a love affair he had with a Russian waitress while working as a photographer aboard the Russian cruise ship MS Taras Shevchenko.

The African lyricist claimed that in 1984, John and longtime lyricist Bernie Taupin were working on the album "Ice On Fire" and were under "considerable strain," struggling to produce enough songs to fill the album. The plaintiff claims John and Taupin stole the narrative theme of "Natasha" for their song "Nikita," about a Cold War-era romance between a Western man and an Eastern European woman.

"Nikita," which appeared on that album the following year, would go on to become the third most popular solo hit of John's career, according to the complaint.

Judge St. Eve ruled in October 2012 that the theme of the two songs was common and not protected under the Copyright Act. She also said Hobbs had not established a substantial

similarity between "Natasha," about a British man and a Ukrainian woman who did meet, and John's "Nikita," about an East German woman peering through the Berlin wall at a man she never met.

On March 4, Hobbs filed an appeal disputing not only Judge St. Eve's ruling but also the Peters v. West decision, in which the Seventh Circuit ruled that rapper Kanye West had not infringed lyrics by plaintiff Vince Peters, also known as Vince P.

Tom J. Ferber of Pryor Cashman LLP, counsel to the defendants, said the court reached the right result, one based on "well-settled copyright law."

"There is simply no legally cognizable similarity between Mr. Hobbs' unpublished lyrics and 'Nikita,'" Ferber told Law360 on Wednesday. "One cannot monopolize what Mr. Hobbs described as a 'Cold War Romeo and Juliet' theme."

Circuit Judges Joel M. Flaum, Daniel A. Manion and Ilana Diamond Rovner joined in the decision.

Representatives for Hobbs didn't immediately return requests for comment on Wednesday.

Hobbs is represented by Daniel Voelker of Voelker Litigation Group.

The defendants are represented by Tom J. Ferber, Ilene S. Farkas and Stephanie R. Kline of Pryor Cashman LLP and Howard L. Huntington of Mahoney Silverman & Cross LLC.

The case is Guy Hobbs v. Elton John a/k/a Sir Elton Hercules John et al., case number 12-3652, in the Seventh Circuit Court of Appeals.

--Additional reporting by Matthew Heller and Kurt Orzech. Editing by Katherine Rautenberg.

# VARIETY

## *Elton John, Bernie Taupin Win Dismissal of Suit Claiming They Stole ‘Nikita’ Lyrics*



Matthew Eisman/WireImage | July 17, 2013 | 01:02PM PT



**Ted Johnson** Senior Editor@tedstew

A federal appellate court dismissed an aspiring songwriter's suit against Elton John and Bernie Taupin, claiming that they lifted their song "Nikita" from a song he wrote called "Natasha."

Photographer Guy Hobbs claimed that several years before Big Pig Music published "Nikita," he sent "Natasha" to the publisher. His song, inspired by a love affair he had with a Russian waitress, was never released. Big Pig Music also was a defendant in his copyright infringement suit.

But the 7th Circuit Court of Appeals ruled that, even though "Nikita" also had a theme of love between a Western man and a Communist woman, "each song expresses this general idea differently."

"That is, 'Natasha' and 'Nikita' tell different stories about impossible romances during the Cold War," the appellate court said in a decision issued on Wednesday. They noted that "Natasha" tells the story of an actual, brief romantic encounter between a man from the United Kingdom and a woman from Ukraine, while "Nikita" tells the take of a man who sees and loves a woman from afar.

The three-judge panel did note that both songs “make liberal use of repetition — including repeatedly using the word ‘never,’ the phrases ‘to hold you’ and ‘you’ll never know,’ as well as the beloved’s name. Additionally, each song’s title is a Russian name beginning with the letter ‘N’ and ending with the letter ‘A.’”

Yet the judges ruled that “while these similar elements are present at the level of expression, they are also rudimentary, commonplace, standard, or unavoidable in popular love songs. Repetition is ubiquitous in popular music.”

Their decision upholds a district court dismissal of the suit, which was filed last year.

Tom Ferber and Ilene Farkas of Pryor Cashman represented the publisher, John and Taupin. Hobbs was represented by Daniel Voelker of Voelker Litigation Group.