

# Chicago Daily Law Bulletin

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## **Court affirms \$80,000 in fees and sanctions for frivolous lawsuit**

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A Chicago lawyer and his former client must pay a combined total of \$80,000 in attorneys' fees and sanctions for pursuing a frivolous copyright infringement lawsuit, a federal appeals court has ruled.

The 7th U.S. Circuit Court of Appeals panel upheld a district court judge's ruling imposing the fees and sanctions against lawyer Brian T. Nix and his former client, Chitunda Tillman Sr.

Nix and Tillman appealed the lower court's rulings before the 7th Circuit. The three-judge appeals court panel said it was using the deferential abuse of discretion standard of review.

"Nix simply has not met that high standard here," the panel said.

In 2005, Tillman filed a pro se lawsuit accusing the makers of the movie "John Q." of copyright infringement. The defendants included New Line Cinema Corp. and Time Warner Inc.

Tillman contended that in 1998 he wrote a screenplay titled, "Kharisma Heart of Gold" and that the screenplay was stolen and sold to New Line Cinema.

Two months after Tillman filed the initial complaint, Nix filed an 63-page amended complaint against more than 20 defendants seeking \$420 million in total damages, the panel's decision said.

Nix remained in the case for two years despite warnings from the defendants that they planned to seek sanctions if he went ahead with what they deemed frivolous claims, the decision said.

Evidence in the case showed that "John Q." was written five years before Tillman's screenplay, Tuesday's decision said.

Nix was allowed to withdraw from the case shortly after New Line Cinema and Time Warner filed a motion for summary judgment, according to court documents.

In March 2008, U.S. District Court Judge Matthew F. Kennelly granted the defendants' motion for summary judgment on the copyright claims in the case. The 7th Circuit affirmed his summary judgment decision in October 2008, according to court documents.

In late December 2008, Kennelly issued a 20-page decision relating to the defendants' request for attorneys fees and costs. He stated that Tillman "pressed ahead with his baseless claims even when confronted with the defendants' summary judgment motion."

Kennelly also found that Nix "unreasonably and vexatiously multiplied the proceedings in this case."

Kennelly awarded the defendants \$60,000 against Nix and Tillman jointly and \$20,000 that will be Tillman's sole responsibility, according to Kennelly's memorandum opinion and order.

Nix asserted on appeal that he did not vexatiously multiply the proceedings. He failed to show that the amount of the sanctions was excessive, the appeals court panel said.

The defendants' sought \$298,993 in attorney fees, court documents state. But Kennelly declined to award that amount, noting that Nix "did the right thing and withdrew from the case."

"Nix simply has not demonstrated that the district court abused its discretion by not whittling down those fees even further," the appeals court panel said in its four-page unpublished order entered Tuesday.

The panel comprised 7th Circuit Judges Joel M. Flaum, Michael S. Kanne and Terence T. Evans. *Chitunda Tillman v. New Line Cinema et al.*, Nos. 09-1636 and 09-1778.

Nix, who represented himself on appeal, could not be reached for comment late Wednesday morning.

Tillman, who represented himself in the appeal, said he expects to ask the U.S. Supreme Court to review Tuesday's decision.

Tom J. Ferber, a partner with Pryor, Cashman LLP in New York, who represented the defendants on appeal, said he was pleased with the appeals court's most recent ruling.