

## APPENDIX TABLE OF CONTENTS

Opinion of the Eleventh Circuit (June 20, 2019) .....	1a
Order Adopting Report and Recommendation (August 8, 2018) .....	8a
Report and Recommendation on Defendant's Motion to Dismiss (June 28, 2018) .....	10a
Complaint (March 19, 2018).....	23a
Complaint (January 16, 1990).....	42a
Relevant Constitutional Provision .....	49a

**OPINION OF THE ELEVENTH CIRCUIT  
(JUNE 20, 2019)**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

MIMI KORMAN,

*Plaintiff-Appellant,*

v.

JULIO IGLESIAS,

*Defendant-Appellee.*

---

No. 18-13772

D.C. Docket No. 1:18-cv-21028-KMW

Appeal from the United States District Court  
for the Southern District of Florida

Before: MARTIN, NEWSOM, and  
BRANCH, Circuit Judges.

---

**PER CURIAM:**

This is not the first lawsuit that Mimi Korman has filed against Julio Iglesias over his 1978 song “Me Olvidé de Vivir.”

In 1990, Korman’s first federal suit sought damages in tort for Iglesias’s theft of the song. She alleged that she co-authored with the song with him but he never paid her share of the royalties from it.

## App.2a

In that litigation, Korman gave a deposition detailing the collaborative process by which she and Iglesias had co-written the song, as well as a sworn affidavit to that effect. The district court accepted as true Korman's assertion of co-authorship but rejected her tort claims as time-barred by the statute of limitations. *Korman v. Iglesias*, 825 F. Supp. 1010, 1016-17 (S.D. Fla. 1993), *aff'd*, 43 F.3d 678 (11th Cir. 1994) (mem.).

In the present action, a copyright suit,<sup>1</sup> Korman has changed her tune. She now alleges that "Korman alone authored the Work." Compl. ¶ 11. Following Iglesias's motion to dismiss, the district court took judicial notice of the court orders and Korman's deposition and affidavit in the earlier litigation. The court found that judicial estoppel barred her new claim because Korman had previously asserted that she is the co-author, not the sole author, of the song.<sup>2</sup> Although Korman responded that her earlier position was a mistake based on Iglesias's fraudulent

---

<sup>1</sup> The Copyright Act's three-year statute of limitations restarts each time a work is republished. *See Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 671 (2014) (citing 17 U.S.C. § 507(b)).

<sup>2</sup> These facts matter because the Copyright Act considers a "joint work" an inseparable "unitary whole," 17 U.S.C. § 101, and authors of a joint work "are coowners of copyright in the work," *id.* § 201(a). Each joint author therefore "automatically acquires an undivided ownership in the entire work." 1 *Nimmer on Copyright* § 6.03 (2018). As a result, "an action for infringement between joint owners will not lie because an individual cannot infringe his own copyright." *Weissmann v. Freeman*, 868 F.2d 1313, 1318 (2d Cir. 1989).

### App.3a

representations and her counsel's advice, the district court dismissed the copyright claim with prejudice.<sup>3</sup>

We review a district court's decision to apply judicial estoppel for an abuse of discretion. *Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1180 n.4 (11th Cir. 2017) (en banc). Judicial estoppel is an equitable doctrine intended to protect the integrity of the courts from "parties who seek to manipulate the judicial process by changing their legal positions to suit the exigencies of the moment." *Id.* at 1176. The rule of judicial estoppel is that, "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis v. Wakelee*, 156 U.S. 680, 689 (1895). Judicial estoppel may be applied when the plaintiff "took a position under oath in the [prior] proceeding that was inconsistent with the plaintiff's pursuit of the [present] lawsuit" and she thus "intended to make a mockery of the judicial system." *Slater*, 871 F.3d at 1180. We typically also consider whether the inconsistency is clear, whether the party had success in persuading the earlier court to accept the position, and whether an unfair advantage or detriment would accrue in the present litigation if not estopped. *Id.* at 1181 (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)).

---

<sup>3</sup> Korman also alleged a claim under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*, which the district court dismissed without prejudice. Korman has filed this appeal rather than amending her complaint, and she raises no FDUTPA issues on appeal.

Korman challenges the application of judicial estoppel to her copyright claim on three main grounds. First, she argues that a court may not make a finding of intent “to make a mockery of the judicial system” without discovery, citing various nonprecedential decisions. We disagree. Though there may be instances in which the plaintiff’s intent is not clear from the pleadings, this is not one of them. The clear assertion of sole authorship on the face of Korman’s complaint, in light of her previous allegations, is the epitome of “the old sporting theory of justice’ or the use of the federal courts as a forum for testing alternate legal theories *seriatim*.” *Fla. Evergreen Foliage v. E.I. DuPont de Nemours & Co.*, 470 F.3d 1036, 1042 (11th Cir. 2006). Her affirmative change of position plainly reflects “cold manipulation and not an unthinking or confused blunder.” *Slater*, 871 F.3d at 1181 (quoting *Johnson Serv. Co. v. Transamerica Ins. Co.*, 485 F.2d 164, 175 (5th Cir. 1973)).

Second, Korman argues that considering her 1992 deposition and 1993 affidavit was improper without converting Iglesias’s motion to dismiss into a motion for summary judgment and entering those documents into evidence. *See* Fed. R. Civ. P. 12(d) (“If, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.”) We disagree. Our Court has articulated an exception to Rule 12(d)’s conversion provision when considering materials attached to a motion to dismiss that are both central to the plaintiff’s claim and undisputed. *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). Korman’s earlier statements on the subject of the authorship of the song

### App.5a

are certainly central here, and neither party disputes the authenticity of her deposition and affidavit. Their consideration was thus within the discretion of the district court.

Third, Korman argues that her prior statements of co-authorship are not materially or legally inconsistent, because they were the result of Iglesias's fraudulent inducements. Again, we disagree. Whatever promises Iglesias may have made to Korman to induce her to work on the song, her 1992 deposition consistently portrays a collaborative co-writing process. That testimony is plainly and pervasively inconsistent with Korman's present claim of sole authorship. As she testified, that process began with Iglesias giving Korman handwritten notes of his early ideas for the song; the two then met together at least eight times to work on the lyrics; and the final lyrics involved further changes to what Korman had felt was her final contribution. Korman even spent a significant portion of the deposition going through the song line by line, identifying which specific lyrics were hers and which were Iglesias's. Similarly, Korman's 1993 affidavit avers under oath that "Mr. Iglesias and I worked together for about two weeks and both contributed to the adaptation. . . . There is no question that I am a co-author of this song along with Mr. Iglesias." Although Korman now asserts that she claimed that she and Iglesias were co-authors only because Iglesias said they were, the substance of her testimony does not support her new claim of sole authorship. The district court reasonably rejected Korman's attempts to harmonize her previous position on the song with her present one.

In sum, the district court did not abuse its discretion when it invoked the flexible, equitable doctrine of judicial estoppel here. “Equity eschews mechanical rules’ and ‘depends on flexibility.’” *Slater*, 871 F.3d at 1187 (quoting *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946)). We affirm the district court’s consideration of “all facts and circumstances in evaluating the plaintiff’s intent,” *id.*, as well as its exercise of its discretion in defense of the integrity of the judicial process. Korman’s current position is clearly inconsistent with her earlier one, which was fully accepted by the 1990s district court. Although that acceptance did not result in success for Korman, allowing her to proceed with her new position would still create the perception that the first court was misled. Allowing Korman’s new position would also give her an unfair advantage, granting her a second chance to litigate a timeworn claim. *See generally New Hampshire*, 532 U.S. at 750-51. The district court was entitled to defend itself against Korman’s attempt to circumvent the time bar by asserting diametrically opposed facts. The balance of equities here favors barring Korman’s present complaint in order to “protect the judiciary, as an institution, from the perversion of judicial machinery.” *See Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982).

Finally, we note that Iglesias has moved for the sanction of attorney’s fees. *See Fed. R. App. P. 38* (“If a court of appeals determines that an appeal is frivolous, it may . . . award just damages and single or double costs to the appellee.”). Although we find reasonable the district court’s conclusion that Korman intended to make a mockery of the judicial system,

App.7a

we do not find Korman's appeal of that decision patently frivolous.

Accordingly, we AFFIRM the dismissal with prejudice of Korman's copyright claim, and we DENY Iglesias's Rule 38 motion for attorney's fees.

ORDER ADOPTING REPORT AND  
RECOMMENDATION  
(AUGUST 8, 2018)

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

---

MIMI KORMAN,

*Plaintiff,*

v.

JULIO IGLESIAS,

*Defendant.*

---

Case No. 18-21028-CIV-WILLIAMS

Before: Kathleen M. WILLIAMS,  
United States District Judge.

---

THIS MATTER is before the Court on Magistrate Judge Edwin G. Torres's Report and Recommendation (DE 36) (the "Report") regarding Defendant's motion to dismiss (DE 16). The Report recommends that Defendant's motion be granted in part. Plaintiff filed objections to the Report, (DE 40), to which Defendant filed a response (DE 42), to which Plaintiff filed a reply (DE 45). Defendant also filed limited objections to the Report. (DE 41). Upon an independent review of the Report, the Parties' objections, the record, and applicable case law, it is ORDERED AND ADJUDGED that:

App.9a

1. The Report is AFFIRMED and the analysis contained in the Report (DE 36) is ADOPTED and incorporated herein by reference.
2. Defendant's motion to dismiss (DE 16) is GRANTED.
3. Defendant's motion for judicial notice (DE 17) is GRANTED.
4. Plaintiff may file an amended complaint only as to her FDUTPA claim within 14 days of the date of this Order. All other claims are DISMISSED WITH PREJUDICE for the reasons set forth in the Report.

DONE AND ORDERED in chambers in Miami, Florida, this 8th day of August, 2018.

/s/ Kathleen M. Williams  
United States District Judge

REPORT AND RECOMMENDATION ON  
DEFENDANT'S MOTION TO DISMISS  
(JUNE 28, 2018)

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

---

MIMI KORMAN,

*Plaintiff,*

v.

JULIO IGLESIAS,

*Defendant.*

---

Case No. 18-21028-CIV-WILLIAMS/TORRES

Before: Edwin G. TORRES,  
United States Magistrate Judge.

---

This matter is before the Court on Julio Iglesias's ("Defendant") Motion to Dismiss with prejudice ("Motion") [D.E. 16] Mimi Korman's ("Plaintiff") Complaint. [D.E. 1]. More specifically, Defendant moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff's Complaint fails to state claims under the Copyright Act and Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). After careful consideration of the Motion, Response, Reply, all relevant authorities, and for the reasons discussed below, Defendant's Motion to Dismiss this action

should be GRANTED in part, with leave for Plaintiff to amend only her FDUTPA claim.

### I. Background

In May of 1978, Defendant asked Plaintiff to write Spanish lyrics for a popular French song Defendant intended to record. Defendant told Plaintiff that he would pay her 33% of the song's royalties for her work. Shortly thereafter, Plaintiff wrote the Spanish lyrics of the song "Me Olvide De Vivir" (the "Song"). Defendant first released the Song in 1978. In the forty years since, Defendant has reproduced, distributed, and published the Song at least 100 times in various formats. But Plaintiff believes that she alone authored the lyrics of the Song and never assigned her copyright of the lyrics to Defendant. She further alleges that Defendant has enjoyed generous profits from his unauthorized use of the Song and that, as a result, she has suffered damages.

To that end, on March 19, 2018, Plaintiff initiated a Complaint against Defendant, seeking damages and injunctive relief under both the Copyright Act and FDUTPA. Specifically, Plaintiff alleges that Defendant infringed on Plaintiff's copyright, most recently in 2017 when Defendant allegedly participated in the publication and distribution of the Song on Defendant's compilation album "The Real . . . Julio Iglesias." Plaintiff also alleges that Defendant's unauthorized use of the Song constitutes "unfair methods of competition and unfair or deceptive acts and practices," in violation of FDUTPA.

Defendant, in response, moved to dismiss Plaintiff's claim on April 23, 2018. [D.E. 16]. Defendant argues that the doctrines of res judicata and collateral

estoppel preclude Plaintiff from asserting her copyright infringement claim because Plaintiff and Defendant have twice before litigated this dispute—once in Federal Court in 1993, and again in state court in 2015. *Id.* Defendant also contends that Plaintiff has failed to state a cause of action under FDUTPA and that, to the extent her FDUTPA claim is legitimate, it is pre-empted by the Copyright Act. *Id.* Accordingly, Defendant requests that we dismiss Plaintiff's Complaint with prejudice. [D.E. 16].

## II. Legal Standard

The Federal Rules of Civil Procedure require a complaint to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard “does not require ‘detailed factual allegations,’ . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (quoting *Twombly*, 550 U.S. at 555). Pleadings must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Indeed, “only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Iqbal*, 556 U.S. at 679 (citing *Twombly*, 550 U.S. at 556). To meet this “plausibility standard,” a plaintiff must “plead[ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for

the misconduct alleged." *Id.* at 678 (citing *Twombly*, 550 U.S. at 556).

When reviewing a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take all factual allegations contained therein as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). Under normal circumstances, a court's review of a motion to dismiss is limited to the four corners of the complaint. *St. George v. Pinellas County*, 285 F.3d 1334, 1337 (11th Cir. 2002). Yet, in certain circumstances, a court may also consider materials outside of the complaint. *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). In looking to these external materials, ordinarily a court must convert the motion to dismiss into a motion for summary judgment. *See* Fed. R. Civ. P. 12(d). However, a court may consider a document attached to a motion to dismiss without converting it to one for summary judgment if the attached document is (1) central to the plaintiff's claim and (2) undisputed. *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002). In this context, "undisputed" means that the authenticity of the document is not challenged. *Id.*

### III. Analysis

#### A. Copyright Infringement Claim

##### 1. Judicial Notice

The Federal Rules of Evidence provide that "[a] court may judicially notice a fact that is not subject to reasonable dispute [if] it: (1) is generally known within the trial court's territorial jurisdiction; or (2)

can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Furthermore, “[t]he court may take judicial notice at any stage of the proceeding.” Fed. R. Evid. 201(d).

Pursuant to Federal Rule of Evidence 201, Defendant requests that in considering this Motion the Court take judicial notice of the following four documents: (1) Plaintiff’s 2015 State Court Complaint; (2) Plaintiff’s Deposition from the 1993 Federal Court case; (3) Plaintiff’s Affidavit from the 1993 Federal Court case; and (4) court orders from the 1993 Federal Court case. [D.E. 17].<sup>1</sup> We will take judicial notice of the first three documents because each contains information regarding the authorship of the Song—a fact that is undoubtedly central to Plaintiff’s copyright infringement claim—and Plaintiff has not disputed the authenticity of those documents. *See Horsley*, 304 F.3d at 1134.

Likewise, we will take judicial notice of the court orders from the 1993 case between Plaintiff and Defendant. Public records are among the permissible facts that a district court may consider on a motion to dismiss. *See Universal Express, Inc. v. U.S. S.E.C.*, 177 F. App’x 52, 53 (11th Cir. 2006) (quoting *Stahl v. U.S. Dep’t of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003) (“The district court may take judicial notice of public records and may thus consider them on a motion to dismiss.”)). As court orders fall within the definition of what constitutes a public record, we will consider them in ruling on Defendant’s Motion. *See Baloco v. Drummond Co.*, 767 F.3d 1229, 1245 (11th Cir. 2014)

---

<sup>1</sup> Defendant attached the first three documents to his Motion.

(taking judicial notice of depositions and declarations from parties' prior litigation); *see also Horne v. Potter*, 392 F. App'x 800, 802 (11th Cir. 2010) (holding that district court properly took judicial notice of documents from parties' prior litigation); *Turner v. AMICO*, No. CV-15-BE-1202-S, 2015 WL 7770232, at \*7 (N.D. Ala. Dec. 3, 2015) (taking judicial notice of statements made by plaintiff under penalty of perjury in parties' prior litigation).

## 2. Judicial Estoppel

The doctrine of judicial estoppel bars Plaintiff from bringing her copyright infringement claim against Defendant. The Eleventh Circuit has explained that “[j]udicial estoppel is an equitable doctrine invoked at the court’s discretion, designed ‘to protect the integrity of the judicial process.’” *Transamerica Leasing, Inc. v. Inst. of London Underwriters*, 430 F.3d 1326, 1335 (11th Cir. 2005) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)). Courts apply this doctrine “to prevent a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding.” *Id.* And while “[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle,” the Supreme Court has outlined three factors for courts to consider when determining the doctrine’s applicability. *New Hampshire*, 532 U.S. at 750-51.

First, a party’s later position must be “clearly inconsistent” with its earlier position. *Id.* at 750 (quoting *United States v. Hook*, 195 F.3d 299, 306 (7th Cir. 1999)). Second, courts regularly ask whether the party has been successful in persuading a court

to accept that party's earlier position, so that judicial acceptance of the later position would create "the perception that either the first or the second court was misled." *Id.* (quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 599 (6th Cir. 1982)). Third, courts consider whether the party seeking to assert an inconsistent position "would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* at 751.

In the Eleventh Circuit, courts consider two additional factors. *See Transamerica Leasing, Inc.*, 430 F.3d at 1335. "[F]irst, it must be established that the allegedly inconsistent positions were made under oath in a prior proceeding; and, second, the inconsistencies must have been calculated to make a mockery of the judicial system." *Id.* Notwithstanding these factors, the Supreme Court has made clear that the applicability of judicial estoppel does not rest on "inflexible prerequisites" or an "exhaustive formula." *New Hampshire*, 532 U.S. at 751. Thus, a court may consider the unique facts and circumstances of each case when deciding on the applicability of the doctrine. *See id.*

In this case, we must accept as true Plaintiff's claim that she is the sole author of the Song. *See Brooks*, 116 F.3d at 1369 (in ruling on motion to dismiss, courts must take factual allegations of complaint as true). However, we must also take judicial notice of Plaintiff's 2015 State Court Complaint, Plaintiff's Deposition from the 1993 Federal Court case, Plaintiff's Affidavit from the 1993 Federal Court case, and court orders from the 1993 Federal Court case. In considering these documents together,

we find that Plaintiff is judicially estopped from asserting here that she is the sole author of the Song.

In her 2015 State Court Complaint, Plaintiff declared eight times that she and Defendant were either “co-authors” or “co-owners” of the Song. [D.E. 16]. Furthermore, in her 1993 Deposition, Plaintiff admitted that she was the “secondary author” of the Song, and she identified Defendant as either the sole author or co-author of seven lines of the Song. [D.E. 31]. Plaintiff also stated in her 1993 Affidavit that “[t]here is no question that I am a co-author of this song along with [Defendant].” [D.E. 16]. In addition, court orders from the 1993 litigation confirm Plaintiff’s prior sworn positions. In that case, the court relied on those positions and held that the parties were “co-authors of the controverted song” and that as such, Plaintiff could not bring an infringement claim under 17 U.S.C. § 501. [D.E. 16]; *Korman v. Iglesias*, 736 F. Supp. 261, 264 (S.D. Fla. 1990) (holding that co-authors of a copyrighted work may not bring an infringement claim against each other).

But here, she attempts to do just that. Three years and a full 180 degrees later, Plaintiff now contends that she is the sole author of the Song. Plaintiff justifies the discrepancy by arguing that the parties are not true “co-authors” within the meaning of the Copyright Act. [D.E. 23]. In doing so, Plaintiff seeks to reframe the issue of authorship as a legal question, rather than a factual question, in an effort to excuse her prior positions as merely mistaken legal conclusions. But by Plaintiff’s own admission, “whether a contribution is independently copyrightable is a question of fact.” *See* D.E. 23 (emphasis added). Indeed, the classic case of judicial estoppel arises when a litigant

asserts inconsistent statements of fact or adopts inconsistent positions on combined questions of fact and law. *Patriot Cinemas, Inc. v. General Cinemas Corp.*, 834 F.2d 208, 214 (1st Cir. 1987).<sup>2</sup>

Having failed on her earlier claim, it appears that Plaintiff now seeks to “deliberately change[ ] positions” in an effort to take advantage of “the exigencies of the moment.” *See New Hampshire*, 532 U.S. at 743. Clearly, her prior statements that she and Defendant were co-authors of the Song directly contradict her current position that she is the sole author of the Song. Both conclusions cannot be true. *See Patriot Cinemas*, 834 F.2d at 214 (judicial estoppel barred plaintiff from claiming he was both an employee and not an employee of defendant). And, her inconsistent prior positions were made under oath—in both a deposition and an affidavit—which satisfies the first factor outlined by the Eleventh Circuit with regard to judicial estoppel. *See Transamerica Leasing, Inc.*, 430 F.3d at 1335.

Likewise, it appears that Plaintiff’s calculated change of position was undertaken in an effort to “make a mockery of the judicial system.” *See id.* While discerning Plaintiff’s intent might ordinarily prove a difficult task on a motion to dismiss, the record before

---

<sup>2</sup> The Eleventh Circuit has not distinguished between issues of fact and law when ruling on the applicability of judicial estoppel. *See United Kingdom v. United States*, 238 F.3d 1312, 1324 (11th Cir. 2001) (holding merely that judicial estoppel applies to calculated assertion of divergent sworn positions). Thus, regardless of whether we classify the authorship of the Song as an issue of fact or as an issue of mixed fact and law, judicial estoppel still applies. *See Patriot Cinemas, Inc.*, 834 F.2d at 214.

us makes a compelling case that Plaintiff's change of position arose out of (1) a calculated attempt to circumvent prior court rulings (2) in order to gain an unfair advantage over Defendant. Twice before, Plaintiff has claimed before a court that she and Defendant are co-authors of the Song. We will not turn a blind eye to these previous statements, especially when the most recent claim arose just three years prior to the commencement of this litigation, and Plaintiff succeeded in persuading this Court to accept her "co-author" position in the 1993 action. *See Korman*, 736 F. Supp. at 264.

If we take Plaintiff's contention that she is the sole author of the Song at face value, as we must on a motion to dismiss, then—as explained above—she is judicially estopped from asserting her claim here; to allow otherwise would create "the perception that either the [1993 court] or [this] court was misled." *See New Hampshire*, 532 U.S. at 750. On the other hand, if we grant Plaintiff leave to amend her Complaint to state that she and Defendant are co-authors of the Song, then it becomes impossible to state a claim under the Copyright Act. *See Korman*, 736 F. Supp. at 264. (holding that co-authors of a copyrighted work may not bring an infringement claim against each other). No matter what factual allegations Plaintiff attempts to assert, she simply cannot state a plausible claim for relief under the Copyright Act. Accordingly, the Court should GRANT with prejudice Defendant's Motion to Dismiss Count I.

#### B. FDUTPA Claim

Defendant also moves to dismiss Plaintiff's FDUTPA claim, alleging that Plaintiff "has not asserted

any facts which support a claim under FDUTPA.” [D.E. 16]. Defendant also argues that Plaintiff has merely repackaged her copyright infringement claim under a different name and a different statute, and that in doing so, failed to assert additional facts avoiding preemption by the Copyright Act. [D.E. 16]; *See StripTeaser, Inc. v. Strike Point Tackle, LLC*, No. 13-62742-CIV, 2014 WL 866396, at \*5 (Mar. 5, 2014) (an extra element in addition to the acts of reproduction, performance, distribution, or display is required to avoid preemption by Copyright Act).

Defendant’s points are well taken. In her Complaint, Plaintiff merely restates the same factual allegations contained in her copyright infringement claim, with the added caveat that “the acts and practices of Defendant . . . constitute[ ] unfair methods of competition and unfair or deceptive acts and practices under [FDUTPA].” [D.E. 1]. But pleadings must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. In short, Plaintiff has not alleged any additional facts that allow us “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

Furthermore, as written, Plaintiff’s FDUTPA claim is preempted by the Copyright Act because Plaintiff has not alleged an “extra element” in addition to the acts of reproduction, distribution, or display, as is required. *See StripTeaser*, 2014 WL 866396, at \*5. Merely employing the adjectives “unfair,” “competition,” and “deceptive” does not suffice. *See id.* To avoid preemption by the Copyright Act, Plaintiff must assert additional facts that qualitatively change the

nature of the action. *See Pegasus Imaging Corp. v. Northrop Grumman Corp.*, 2008 WL 5099691, at \*4 (M.D. Fla. Nov. 25, 2008). Thus, to state a claim under FDUTPA, Plaintiff may not merely restate the factual allegations forming the basis of her copyright infringement claim.

However, Plaintiff has requested leave to amend her Complaint to “allege more clearly [Defendant’s] wrongful conduct.” [D.E. 23]. Plaintiff claims that she possesses additional facts that, when alleged, will satisfy the extra element test avoiding preemption. [D.E. 23]. Given Plaintiff’s request and the early stage of this litigation, we should grant Plaintiff leave to amend her FDUTPA claim. In doing so, Plaintiff must state additional facts supporting her claim, instead of the mere “labels and conclusions” that she currently sets forth. Furthermore, Plaintiff must state new facts making her FDUTPA claim qualitatively different from her copyright infringement claim. Failure to do so will result in the dismissal of this action. Accordingly, we should GRANT without prejudice Defendant’s Motion to Dismiss, with leave for Plaintiff to amend her FDUTPA claim.

### III. Conclusion

For the foregoing reasons, it is hereby RECOMMENDED that Defendant’s Motion to Dismiss Plaintiff’s copyright infringement claim be GRANTED with prejudice and that Defendant’s Motion to Dismiss Plaintiff’s FDUTPA claim be GRANTED without prejudice.<sup>3</sup> Any amended complaint must be filed within

---

<sup>3</sup> Upon amendment, Plaintiff must also show why this Court should continue exercising jurisdiction over the claims following dismissal of Count I.

App.22a

fourteen (14) days from the date of the Order on the Motion.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of June, 2018.

/s/ Edwin G. Torres  
United States Magistrate Judge

COMPLAINT  
(MARCH 19, 2018)

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

---

MIMI KORMAN, an individual,

*Plaintiff,*

v.

JULIO IGLESIAS, an Individual,

*Defendant.*

---

Case No. 18-21028-CV-WILLIAM/TORRES

---

Plaintiff, MIMI KORMAN ("Mimi Korman"), by and through undersigned counsel, sues Defendant JULIO IGLESIAS (sometimes "Iglesias"), and alleges:

**Introduction**

Behind every great fortune lies a great crime.  
—Honore de Balzac

1. Defendant Julio Iglesias ("Iglesias"), a musical legend, has enjoyed a stellar four (4) decades long career amassing adoration and hundreds of millions of dollars. This action seeks to at long last right Julio Iglesia's brazen infringement, four (4) decades long, of the song that Plaintiff Mimi Korman authored and which catapulted Julio Iglesias into global musical

stardom. Accordingly, this action seeks damages for Iglesias' copyright infringement occurring within three (3) years of the filing of this action and injunctive relief against any present and future infringement.

**Nature of the Action,  
Subject Matter Jurisdiction and Venue**

2. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et. seq.*).
3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (copyright infringement); 28 U.S.C. § 1367 (supplemental jurisdiction).
4. Pursuant to 28 U.S.C. § 1391(b) and (c), venue is proper in this District because (i) a substantial part of the events or omissions giving rise to the claims occurred in this District; and (ii) Defendant resides (and therefore can be found) in this District.

**The Parties and Personal Jurisdiction**

5. Plaintiff Mimi Korman is an individual, is *sui juris*, and is a resident of Miami-Dade County, Florida.
6. Defendant Julio Iglesias is an individual, is *sui juris*, is a resident of Miami-Dade County, Florida, and is subject to the personal jurisdiction of this Court.
7. Even if Iglesias were not a Florida resident (which he is), this Court would have personal jurisdiction over Iglesias pursuant to Section 48.193, Fla. Stat. (2018) and Rule 4(k)(1), Fed. R. Civ. P., as Iglesias has committed one or more tortious acts within the

State of Florida which has caused injury to Plaintiff within Florida or, in the alternative, Iglesias has engaged in substantial and not isolated activity in the State of Florida. Moreover, Iglesias has purposefully availed himself of the jurisdiction of this Court by transacting business in this District and the State of Florida, including by infringing on Plaintiff's copyright in Florida.

**Allegations Common to All Counts**

8. In or about May 1978, Iglesias approached Mimi Korman, a well known and successful songwriter and journalist, to write Spanish language lyrics to a French language song Iglesias intended to record. The song had been a hit in Europe for the "French Elvis:" Johnny Hallyday, under the title, "J'ai oublié de vivre," ("I Had Forgotten to Live").

9. Iglesias represented to Mimi Korman that his Spanish record company, Fabrica de Discos Columbia ("FDC"), was in the process of procuring the rights to use the underlying music to accompany the new lyrics, and that for her assignment of her copyright to the lyrics she was to author, his record company was prepared to pay her 3.3% of the song's royalties.

10. Accordingly, Mimi Korman wrote the Spanish lyrics of the song titled "Me Olvide De Vivir" ("I Forgot to Live"). Hereinafter Plaintiff will refer to the Spanish lyrics as (the "Work") and the song derivative of the Work as (the "Song").

11. While, Iglesias and Mimi Korman met for Iglesias to provide his comments to Korman's lyrics, Korman alone authored the Work, and the Work was not work for hire. Korman revised the original French

title and the ideas and images in the lyrics were different from the French lyrics. This was a new song that Mimi Korman crafted to reflect Iglesias's focus on his professional life at the cost of his personal life.

12. In or about September 1978, Iglesias' representative presented Korman with an unexecuted draft contract for Korman to assign her copyright to Iglesias (through his corporate vehicle Star Music). Korman signed it and delivered it to Iglesias, but despite Iglesias's promises, Korman never received a copy of the document she signed or of a fully executed contract signed by both Korman and Iglesias.

13. Therefore, the parties did not contract for any assignment and Korman holds copyright to the Work.

14. In 1978, the Song ("Me Olvide de Vivir") was featured as the lead track on Julio Iglesias' "Emociones" album which was released on 12-inch vinyl on FDC's "Alhambra" label.

15. The album began to sell in great numbers.

16. With a subsequent release in 1980, the Song became a huge international hit and would reach multi-platinum sales. Indeed, the Work became the musical theme to Iglesias' movie, which movie Iglesias eventually retitled after the song.

17. Iglesias and his record company, initially FDC Alhambra, and later CBS which became SONY, made huge profits from the song. It is regarded as one of the two (2) top songs of Iglesias' entire career as one of the world's top singing stars.

18. Over the forty (40) years since Korman authored the Work, Iglesias and his licensees have

reproduced, distributed and published the Song and derivative works, which continue to be distributed and published in various formats, including a motion picture, vinyl, CD, digital downloads, streaming, and as a video soundtrack.

19. Iglesias has licensed the Song and derivative works to other performers who have sold myriad copies in their own right, and has generated and continues to generate profits.

20. Iglesias has released "Me Olvide de Vivir" as a recording at least one hundred (100) times and the Work is widely considered to be his signature song. Iglesias performs the Song at the beginning or end of most shows.

21. Further derivative works include, for example, translations of the Work into Portuguese and Italian.

22. On May 1, 1989 the United States Copyright Office issued Korman Copyright Registration No. Pau001223595 for the Work. A copy of a Copyright Office website screen shot reflecting Korman's copyright registration is attached hereto as Exhibit "A."

23. In or around 2017, Iglesias infringed on Korman's copyright by participating in the publishing and distribution of the Song (derivative of the Work) as Disc 1, Track 12 of the compilation album titled "The Real . . . Julio Iglesias" (the "Compilation"). A copy of the Compilation front and back jacket cover, and of the interior Disc 1 jacket cover, is attached hereto as Exhibit "B."

24. On information and belief, Iglesias, and as yet unidentified third parties have released the Song

and derivative works in infringement of Korman's Copyright. Korman will identify the additional infringements, and infringers, and amend this Complaint to state such additional claims.

**Fulfillment of Conditions Precedent,  
Attorney's Fees and Punitive Damages**

25. All conditions precedent to the maintenance of this action have been performed, have occurred, or have been waived or excused.

26. Plaintiff has retained the undersigned attorneys to bring this action and is obligated to pay a reasonable attorneys' fees for their services.

27. Because the Defendants' actions as described herein were performed with actual malice, ill will and gross indifference to or with reckless disregard of Plaintiffs' rights, and amount to willful and wanton acts which were deliberate and without reasonable cause or basis, Plaintiffs reserve the right to amend this Complaint to seek punitive damages in accordance with the provisions of Fla. Stat. § 768.72 (2017).

**COUNT I:  
COPYRIGHT INFRINGEMENT  
(Iglesias)**

28. Plaintiff, MIMI KORMAN, adopts and realleges the allegations set forth in paragraphs 1 through 27 above as if fully and expressly set forth herein and further alleges as follows.

29. As set forth above, Korman is the author and holds copyright to the Work (*i.e.*, Spanish lyrics to the song "Me Olvide De Vivir").

30. The Work is the subject of Certificate of Copyright Registration No. Pau001223595 issued by the Registrar of Copyrights on May 1, 1989. *See Exhibit "A."*

31. The Copyright Act grants Korman the exclusive rights to reproduce and distribute the Work (the Spanish lyrics) and works derivative thereof to the public.

32. Korman has never published the Work.

33. Without Korman's permission, Defendant has reproduced and distributed works derivative of Korman's Work (the Spanish lyrics) to the public (the "Infringing Work"). A copy of the Compilation (*i.e.*, the Infringing Work) front and back jacket cover is attached hereto as Exhibit "B."

34. The Infringing Work infringes on Korman's Work, to wit, the published song incorporates Korman's Spanish lyrics.

35. Defendant has profited from the infringement of the Work.

36. Iglesias has been on notice of Korman's claim of rights to the Work but has nonetheless willfully published and distributed the Infringing Work for his financial benefit.

37. Korman has been damaged as a result of Defendant's actions.

**COUNT II:**  
**Unfair and Deceptive Trade Practice Pursuant to**  
**Florida Statute § 501.201 (2017)**

38. Plaintiff, MIMI KORMAN, adopts and realleges the allegations set forth in paragraphs 1

through 27 above as if fully and expressly set forth herein and further alleges as follows.

39. This is an action for damages and injunctive relief under the Florida Deceptive and Unfair Trade Practices Act, § 501.201, et seq., Fla. Stat. (2017).

40. The acts and practices of Defendant Iglesias described above constitutes unfair methods of competition and unfair or deceptive acts and practices under the Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq. (2017).

41. Plaintiff has suffered damages as a direct and proximate result of Defendant's violation of the Florida Deceptive and Unfair Trade Practices Act, § 501.201 et seq.

**Prayer for Relief**

WHEREFORE, Plaintiff, MIMI KORMAN, respectfully requests that this Court:

- A. pursuant to 17 U.S.C. § 502, and Section 501.211(1), Fla. Stat. (2017),
  - (1) permanently enjoin Defendant Iglesias and his agents, servants, employees, and attorneys; and all other persons who are in active concert or participation with any of the aforementioned from publishing or trafficking the Infringing Work or any other work derivative of Korman's Copyright;
  - (2) order that Iglesias remove all copies of the Infringing Work from any chain of distribution including online and in stores

- (3) order that all labels, signs, prints, packages, wrappers, receptacles, photographs, and advertisements in the possession of the Defendant or his agents or co-conspirators, depicting or promoting the Infringing Work, or a colorable imitation thereof, and all plates, molds, matrices, negatives, and other means of making the same, be delivered up to this Court and destroyed;
- (4) order Defendant Iglesias to file with the Court and serve on the Plaintiff within thirty days (30) after the service on the Defendant of the permanent injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

- (B) award Plaintiff damages, including copyright infringement damages pursuant to 17 U.S.C. § 504(b);
- (C) award Plaintiff Defendants' copyright infringement profits pursuant to 17 U.S.C. § 504(b);
- (D) award Plaintiff copyright infringement statutory damages pursuant to 17 U.S.C. § 504(c)(1);
- (E) award Plaintiff maximum statutory damages for willful infringement of \$150,000 pursuant to 15 U.S.C. § 504(c)(2);
- (F) award Korman her costs and attorneys' fees as part of the costs pursuant to 17 U.S.C. § 505;

App.32a

- (G) costs and attorney's fees pursuant to § 501.2105, Fla. Stat.
- (H) award Korman her costs; and
- (I) grant such other and further relief as the Court deems just and proper.

**Demand for a Jury Trial**

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted

THE BOBADILLA LAW FIRM  
Attorneys for Plaintiff  
20900 NE 30th Avenue, Suite 800  
Aventura, FL 33180  
Telephone: 786.446.8643  
Facsimile: 786.446.8641  
fernandob@bobadillafirm.com

By: /s/ D. Fernando Bobadilla, Esq.  
Fla. Bar No. 0136948

Co-counsel:

Marcella S. Roukas, Esq.  
Fla. Bar No. 37829  
20900 NE 30th Avenue  
Suite 815  
Aventura, FL 33180

App.33a

**COPYRIGHT—EXHIBIT “A”**

{Image}

**Copyright**  
United States Copyright Office

Help Search History Titles Start Over

**Public Catalog**

Copyright Catalog (1978 to present)  
Search Request: Left Anchored Copyright Number = Pau001223595  
Search Results: Displaying 1 of 1 entries

[!\[\]\(4f79d33b07646e504c829dd6310cd37f\_img.jpg\)](#) [!\[\]\(87ee1746a49c4f71166de11a2cfdf6c0\_img.jpg\)](#)

[Labelled View](#)

*Me olvide de vivir / Mimi Korman.*

Type of Work: Music  
Registration Number / Date: Pau001223595 / 1989-05-01  
Application Title: J'ai oublié de vivre.  
Title: Me olvide de vivir / Mimi Korman.  
Description: 1 p.  
Notes: Song lyrics.  
Copyright Claimant: Grecia (Mimi) Korman  
Date of Creation: 1978  
Names: Korman, Grecia, 1940.  
Korman, Mimi

[!\[\]\(901360f04a5109d9445ff9f01e61e258\_img.jpg\)](#) [!\[\]\(e30675aa46dfb67a0685d5e79aaf9460\_img.jpg\)](#)

Save, Print and Email (Help Page)  
Select Download Format: Full Record Format for Print/Save  
Enter your email address:  Email

Help Search History Titles Start Over

[Contact Us](#) | [Request Copies](#) | [Get a Search Estimate](#) | [Frequently Asked Questions \(FAQs\) about Copyright](#) |  
[Copyright Office Home Page](#) | [Library of Congress Home Page](#)

App.34a

{Transcription}

COPY RIGHT  
UNITED STATES COPYRIGHT OFFICE

**Public Catalog**

Copyright Catalog (1978 to present)

Search Request:

Left Anchored Copyright Number=Pau001223595  
Search Results: Displaying 1 of 1 entries

*Me olvide de vivir / Mimi Korman.*

Type of Work: Music

Registration Number/Date: PAu001223595/1989-05-01

Application Title: J'ai oublié de vivre.

Title: Me olvide de vivir/Mimi Korman.

Description: 1 p.

Notes: Song lyrics.

Copyright Claimant: Grecia (Mimi) Korman

Date of Creation: 1978

Names: Korman, Grecia, 1940-Korman, Mimi

App.35a

EXHIBIT "B"—COMPILATION FRONT  
AND BACK JACKET COVER, AND OF THE  
INTERIOR DISC 1 JACKET COVER

{Image}



1	2	3
1 La Vida Sigue Igual	1 De Niña A Mujer	1 When I Need You
2 Mamuela	2 Que Nadie Sepa Mi Sufrir	2 99 Miles From L.A.
3 Por El Amor De	3 Amor, Amor, Amor	3 Can't Help Falling In Love
Una Mujer	4 Con La Misma Piedra	4 Milonga (Medley)
5 A Vceas Tu, A Vceas Yo	5 Momentos	5 Milonga Sentimental / Vivo
6 Abrazame (Wrap Your	6 Nathalie	6 I Keep Telling Myself
Arms Around Me)	7 I Don't Want To Wake You	7 Mammy Blues
8 El Amor	8 Bambou Medley:	8 Let It Be Me
9 Amaneci En Tus Brazos	9 Il Tape Sur Des Bambous /	9 with Art Garfunkel
10 Feelings (Part	10 Jamaica	10 When You Tell Me
11 Soy Un Truhán,	11 To All The Girls I've	11 That You Love Me
Soy Un Señor	12 Loved Before	12 with Dolly Parton
12 Begin The Beguine	13 When I Fall In Love	13 Yumba Alto
(Volver A Empezar)	14 Felicidades	14 Balsa Morena
14 Júrame	15 with G. Hopho Vargas	15 La Carrerona
15 Mi Olvide De Vivir	16 I've Got You	16 El Día Que Me Quieras
16 Pobre Diablo	17 Under My Skin	17 La Comparsita
17 Se Mi Lassi Non Vale	18 Ni Te Tengo Ni Te Olvidar	18 My Way
18 Voy A Perder La	19 Lo Mejor De Tu Vida	19 with Paul Shaffer
Cabresa Por Tu Amor	20 Ao, Ao	20 Volver
19 Hombre Solitario	21 Love Is On Our Side Again	21 Moralito (La Gota Fría)
20 Hey (Soy como tu am	22 Bambolino	22 Corazón Parte
		23 Crazy In Love

**COLUMBIA** 

© 1995 SONY MUSIC CORP.

SONY MUSIC

 8 68854 18692 2

{Tracription}

**JULIO IGLESIAS**

**1**

- 1 La Vida Sigue Igual
- 2 Manuela
- 3 Por El Amor De Una Mujer
- 4 A Veces Tu, A Veces Yo
- 5 Abrazame (Wrap Your Arms Around Me)
- 6 El Amor
- 7 Amaneci En Tus Brazos
- 8 Feelings (Live)
- 9 Soy Un Truhán, Soy Un Señor
- 10 Begin The Beguine (Volver A Empezar)
- 11 Júrame
- 12 Me Olvidé De Vivir
- 13 Pobre Diablo
- 14 Se Mi Lasci Non Vale
- 15 Voy A Perder La Cabeza Por Tu Amor
- 16 Hombre Solitario
- 17 Hey (Spanish Version)

**2**

- 1 De Niña A Mujer
- 2 Que Nadie Sepa Mi Sufrir
- 3 Amor, Amor, Amor

App.37a

- 4 Con La Misma Piedra
- 5 Momentos
- 6 Nathalie
- 7 I Don't Want To Wake You
- 8 Bambou Medley: II Tape Sur Des Bambous/Jamaica
- 9 To All The Girls I've Loved Before
- 10 When I Fall In Love
- 11 Felicidades with D. Pedro Vargas
- 12 I've Got You Under My Skin
- 13 Ni Te Tengo Ni Te Olvido
- 14 Lo Mejor De Tu Vida
- 15 Ae, Ao
- 16 Love Is On Our Side Again
- 17 Bamboleo

3

- 1 When I Need You
- 2 99 Miles From L.A.
- 3 Can't Help Falling In Love
- 4 Milonga (Medley) Milonga Sentimental/Vivo
- 5 I Keep Telling Myself
- 6 Mammy Blue
- 7 Let It Be Me with Art Garfunkel
- 8 When You Tell Me That You Love Me with Dolly Parton

App.38a

- 9 Vuela Alto
- 10 Baila Morena
- 11 La Carretera
- 12 El Día Que Me Quieras
- 13 La Cumparsita
- 14 My Way with Paul Anka
- 15 Volver
- 16 Moralito (La Gota Fria)
- 17 Corazón Partío
- 18 Crazy In Love

**CIVIL COVER SHEET  
(MARCH 19, 2018)**

**JS 44 (Rev. 06/17) FLSD Revised 06/01/2017**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. NOTICE: Attorneys **MUST** Indicate All Re-filed Cases Below.

**I.**

- (a) Plaintiffs MIMI KORMAN  
Defendants JULIO IGLESIAS
- (b) County of Residence of First Listed Plaintiff
  - Miami-DadeCounty of Residence of First Listed Defendant
  - Miami-Dade
- (c) Attorneys (Firm Name, Address, and Telephone Number)  
D. Fernando Bobadilla, Esq.,  
20900 NE 30 Ave., Suite 800  
Aventura, FL 33180, (786) 446-8643

**NOTE: In Land Condemnation Cases, Use the Location of the Tract of Land Involved.**

(d) Check County Where Action Arose:

- Miami-Dade

**II. Basis of Jurisdiction**

- Federal Question (US. Government Not a Party)

**IV. Nature of Suit**

- PROPERTY RIGHTS: 820 Copyrights

**V. Origin**

- Original Proceeding

**VI. Related/Re-Filed Case(s)**

- a) Re-filed Case: NO
- b) Related Cases: NO

**VII. Cause of Action**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

- 17 U.S.C. § 101 et. seq. Copyright Infringement

Length of Trial: via 10 days estimated (for both sides to try entire case)

**VIII. Requested in Complaint**

Check Yes only if demanded in complaint:

- Jury Demand: Yes

App.41a

Above information is true & correct to the best of  
my knowledge.

/s/  
Signature of Attorney of Record

Date: 3/19/2018

COMPLAINT  
(JANUARY 16, 1990)

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

---

GRECIA ("MIMI") M. KORMAN,

*Plaintiff,*

v.

JULIO IGLESIAS,

*Defendant.*

---

Case No. 90-0119

---

The Plaintiff, GRECIA ("MIMI") M. KORMAN ("Korman"), sues the Defendant, JULIO IGLESIAS ("Iglesias"), and alleges as follows:

1. The matter in controversy in this action exceeds Fifty Thousand (\$50,000.) Dollars exclusive of interest and costs.
2. Plaintiff Korman is *sui juris*, a citizen of Florida, and a resident of Dade County.
3. Defendant Iglesias is *sui juris* and a citizen of Spain who maintains a part time residence in Dade County, Florida.
4. The Court has jurisdiction of this action under 28 U.S.C. § 1332.

App.43a

5. Plaintiff Korman is a composer and lyricist. Defendant Iglesias is an internationally known performing and recording artist.

6. In May of 1978, Iglesias approached Korman in Dade County, Florida with some ideas and preliminary lyrics he had for a Spanish adaptation of the French song "J'ai oublié de vivre", and asked Korman to write Spanish lyrics for the song.

7. To induce Korman to write Spanish lyrics for the song, Iglesias represented to Korman that his publisher was in the process of securing a writer's contract from the French publisher of the song, and that as compensation for her efforts she would receive a version contract entitling her to 2 1/2% of the sales of sheet music for the song, 15% of the mechanical or phonographic royalties from the song and the song's performance royalties.

8. In reliance upon Iglesias' representations, Korman undertook to and did write Spanish lyrics for the French song "J'ai oublié de vivre", entitling it "Me Olvide' de Vivir". In or about June of 1978, Korman delivered the completed lyrics to Ramon Arcusa, Iglesias' music director, in Dade County, Florida.

9. In or about October of 1978, Enrique M. Garea, known to Korman to be the General Director of Iglesias' Spanish recording company, Alhambra Records, a division of Fabrica de Discos Columbia, S.A., appeared in Dade County, Florida, and presented Korman with a contract securing her royalties for writing the Spanish lyrics to "J'ai oublié de vivre".

10. The contract, which purported to be between Korman and a Spanish entity called Star Music, provided that Korman assigned all of her rights to the

App.44a

Spanish lyrics to "J'ai oublié de vivre" in return for 3.3% of the song's sheet music sales, 16.66% of the mechanical and phonographic royalties from the song, and 50% of the song's performance royalties.

11. Korman executed the above-described contract in Dade County, Florida. At the time she executed it, it had not been executed by Star Music, and she was told by Garea that he would return to Spain with the contract to have it duly executed by Star Music and "registered" with the appropriate Spanish agencies. Korman was not provided with a copy of the partially executed contract.

12. The song "Me Olvide de Vivre" was first released in 1979, and since that time has been recorded by Iglesias on at least seven sound recordings that Plaintiff Korman is aware of, first under the Alhambra and then under CBS record labels. These sound recordings include, *inter alia*, "Emociones", "Todos Los Dias Un Dia", "Mi Vida En Canciones", "En Concierto" and "The Royal Philharmonic Plays the Great Love Songs of Julio Iglesias". In addition, a motion picture entitled "Todos Los Dias Un Dia", which has also been released on video cassette, includes the song on its soundtrack, and the song has been published in lyric sheet form.

13. The song as released includes Plaintiff Korman's original title and a substantial portion of her original lyrics, with the remaining lyrics being substantially similarly to those she provided to Iglesias. Plaintiff Korman is accurately listed as one of the authors of "Me Olvide' de Vivir" in most of its releases, including albums and the motion picture "Todos Los Dias Un Dia".

14. The song, as released on phono albums, audio cassettes, laser discs, and video cassettes, and as printed in lyric sheet form, has and continues to this day to be distributed worldwide throughout Europe, Asia, South, Central and North America and Canada. These sales have and continue to generate enormous revenues and royalties. Plaintiff Korman, however, has never received any royalties or compensation for the song.

15. From 1980 through 1987, Plaintiff Korman, believing she was contractually entitled to royalties from the exploitation of "Me Olvide' de Vivir", diligently attempted to determine when she would begin to receive her royalties and from whom. Among others, Plaintiff contacted Defendant Iglesias, who concealed the truth from her and assured her that the matter of her royalties would be taken care of.

16. In 1988, Plaintiff Korman first learned the truth. The contract Enrique Garea had provided to her was a ruse, presented by Garea on behalf of Iglesias to defraud her and permit Iglesias to obtain the royalties she was entitled to as the adapter of the song. The contract was never signed by Star Music or registered with anyone, and Korman had no contract for royalties. Rather, on October 5, 1978, Iglesias himself had entered into a contract with the French publishers of "J'ai oublié de vivre", Art Music-France and Tanday Music. In the contract, Iglesias falsely represented himself to be the sole author of the Spanish lyrics which Plaintiff Korman had already delivered to him, and thereby secured for himself the royalties he falsely promised to Korman, to wit: 2 1/2% of the sheet music sales, 15% of the mechanical

or phonographic royalties and the song's performance royalties.

17. Pursuant to his contract with Art Music-France and Tanday Music, and in his capacity as the purported sole author of the lyrics of the song, Iglesias has received and continues to receive substantial royalties from "Me Olvide' de Vivir", all of which belong to Plaintiff Korman.

**Count I  
(Fraud)**

18. The allegations of paragraphs 1 through 17 above are realleged and incorporated herein by reference.

19. Defendant Iglesias' representations to Korman that he would provide her with the adapter's royalties if she would write Spanish lyrics for the French song "J'ai oublié de vivre" were, as more fully set forth above, knowingly and maliciously false.

20. At the time Defendant Iglesias made the representations, he intended to secure the adapter's royalties for himself rather than provide them to Plaintiff Korman.

21. Defendant Iglesias intended for Plaintiff Korman to rely upon his representations.

22. Plaintiff wrote the Spanish version of "J'ai Oublié de Vivre", "Me Olvide' de Vivir", and provided it to Iglesias in justifiable reliance upon his false representations.

23. As a direct and proximate result of her reliance upon Iglesias' false representations, Plaintiff

Korman has been damaged by the loss of the royalties promised to her.

WHEREFORE, GRECIA ("MIMI") M. KORMAN demands judgment against JULIO IGLESIAS for compensatory damages in excess of Fifty Thousand (\$50,000.) Dollars, for punitive damages and for costs and interest. Plaintiff further demands trial by jury of all issues so triable as a matter of right.

**Count II  
(Civil Theft)**

24. The allegations of paragraphs 1 through 17 above are realleged an incorporated herein by reference.

25. This is an action for civil theft under Sections 772.11 and 812.014, Florida Statutes.

26. Through the fraudulent scheme described in paragraphs 6 through 17 above, Defendant Iglesias knowingly obtained the property of Plaintiff KORMAN, to wit: her royalties from "Me Olvide de Vivir", with the intent of permanently depriving her thereof and appropriating said monies to himself.

27. As a result of this theft, Plaintiff has been deprived of her royalties, and has been forced to retain the services of the undersigned counsel.

WHEREFORE, GRECIA ("MIMI") M. KORMAN demands judgment against JULIO IGLESIAS for compensatory damages in excess of Fifty Thousand (\$50,000.) Dollars, threefold damages, interest, costs and reasonable attorney's fees. Plaintiff further demands trial by jury of all issues so triable as a matter of right.

**Count III  
(Constructive Trust)**

28. The allegations of paragraphs 1 through 6, 8, 12 through 14, and 17 above are realleged and incorporated herein by reference.

29. As co-authors of "Me Olvide' de Vivir", Iglesias and Korman are co-owners of the copyright in the song.

30. Iglesias has earned profits from the licensing and use of the copyright to "Me Olvide' de Vivir". None of the profits have been shared with Plaintiff Korman, and Iglesias has been unjustly enriched thereby.

31. Iglesias holds said profits in trust for Korman, and has a duty to account to her for her ratable share.

WHEREFORE, GRECIA ("MIMI") M. KORMAN requests the Court to impress a constructive trust upon the royalties received by JULIO IGLESIAS as the purported sole author of "Me Olvide' de Vivir", and to order JULIO IGLESIAS to account and pay over to her ratable share thereof. Plaintiff further demands trial by jury of all issues triable as a matter of right.

DATED this 16th day of January, 1990.

Stewart Tilghman Fox & Bianchi, P.A.  
Attorneys for Plaintiff  
44 West Flagler Street, Suite 1900  
Miami, Florida 33130-1808  
(305) 358-6644

By: /s/ James B. Tilghman, Jr.

## RELEVANT CONSTITUTIONAL PROVISION

---

**U.S. CONST. AMEND. V**  
**Grand Jury Indictment for Capital Crimes;**  
**Double Jeopardy; Self-Incrimination; Due Process of**  
**Law; Takings without Just Compensation**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

