

Corbello v. DeVito
No. 2:08-cv-00867-RCJ-PAL (D. Nev. Aug. 03, 2016)

Year	2016
Court	United States District Court for the District of Nevada
Key Facts	Plaintiff, Donna Corbello, is the widow and heir of Rex Woodward, the writer of a biography about defendant, Thomas DeVito, a founding member of The Four Seasons. In 1988, Woodward and DeVito entered into an agreement providing that they would be co-authors of DeVito’s “authorized biography,” sharing equally in the book’s proceeds, including any adaptations. In 1990, Woodward completed the book and died shortly thereafter. In 1991, DeVito registered the book in his name only as an unpublished autobiography. In 1999, DeVito transferred his right to adapt the biography for purposes of creating a musical based on the “life and music” of The Four Seasons; the hit musical <i>Jersey Boys</i> opened in 2005. After obtaining an amended copyright registration listing Woodward as co-author of the book, Corbello sued to obtain an accounting of her share of the profits derived from the licensing, or alternatively, the unauthorized use, of the biography to produce <i>Jersey Boys</i> . In 2015, the Ninth Circuit reversed and remanded a number of claims previously dismissed on summary judgment. As relevant here, the Ninth Circuit noted that the 1999 transfer of rights may have lapsed in 2004, such that the subsequent exploitation of the book in <i>Jersey Boys</i> “may have infringed Corbello’s copyright interests.”
Issue	Whether unauthorized use of quotes and other references from an unpublished biography in a Broadway musical was a fair use.
Holding	On summary judgment, the court ruled that there remained “a genuine issue of material fact” as to whether certain dialogue and references in the musical <i>Jersey Boys</i> were fair use. The court found that the first two fair use factors weighed against fair use and that the third and fourth factors weighed in favor of fair use. Regarding the first factor, the purpose and character of the use, the court found that the commercial use “tend[ed] to weigh against a finding of fair use because the user stands to profit from exploitation of the copyrighted material without paying the customary price.” The fact that the biography was unpublished led the court to find that the second factor, the nature of the work, also weighed against fair use. At the same time, the court found that the third factor, the amount of the work used, weighed in favor of fair use because the “references” at issue “constituted a small fraction” of the biography. Lastly, the court found that the fourth factor, the effect of the use upon the potential market or value of the work, weighed in favor of fair use because the successful musical “was likely to have increase[d] [the book’s] value and likely didn’t decrease it by much, if at all.”
Tags	Ninth Circuit; Unpublished; Textual work; Other
Outcome	Preliminary ruling, mixed result, or remand

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