

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR THE)	
PREVENTION OF CRUELTY TO)	
ANIMALS, <u>et al.</u> ,)	
)	
Plaintiffs,)	Case No: 03-2006 (EGS)
)	
v.)	
)	
FELD ENTERTAINMENT, INC.,)	
)	
Defendant.)	
_____)	

REPLY IN SUPPORT OF DEFENDANT FELD ENTERTAINMENT, INC.'S
MOTION FOR ENTITLEMENT TO ATTORNEYS' FEES

EXHIBIT 31

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS,

Plaintiff,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

.
. CA No. 03-2006
. Washington, D.C.
. May 22, 2008
. 4:04 p.m.
.

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TRANSCRIPT OF EMERGENCY MOTION
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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by computer-aided transcription.

1 of which at least I think is incomplete, and there are two
2 others that, given the extension, we may or may not be able to
3 finish up.

4 THE COURT: What kind of time frame? Are you looking
5 at Judge Facciola's time frame then for your conclusion of
6 discovery June 30th or July 30th?

7 MS. JOINER: June 30th is what we had asked for in
8 terms of being able to finish up the reports and wrap that up,
9 but we still need to schedule. That leaves us with thirteen to
10 fifteen depositions that we would have to schedule.

11 THE COURT: They can be done in August. That's not a
12 problem.

13 MS. JOINER: I think so, and the expert witnesses are
14 scattered across this country as well as internationally, so
15 it's going to take a little coordination with us to get
16 everybody in here. I think that that can happen this summer.

17 THE COURT: All right, that's fine. So that's your
18 best estimate of time, the end of August?

19 MS. JOINER: Yes, sir, I believe so.

20 THE COURT: And the case would be in a posture for
21 trial then, right?

22 MS. JOINER: I believe so, yes.

23 THE COURT: Let me share a few thoughts and then I'm
24 going to turn this over to Judge Facciola to share a few
25 thoughts. But here's the benefit of my thought process right

1 now, and having just been presented with this binder chalk full
2 of pleadings, it seems to me that the better part of wisdom at
3 this point is to exert whatever influence I have over the
4 attorneys in this case to finish discovery fairly during the
5 next three months, maybe the end of August. Maybe we can impose
6 on Judge Facciola to extend that time through August and put
7 this case in a posture for trial in October, and I say that for
8 a host of reasons. First of all, the case has been around too
9 long. That's the most compelling reason, and the parties are
10 entitled to some finality at least in this court. Secondly, I
11 don't have the luxury of time to devote to one discrete issue in
12 this case, and this motion addresses one discrete issue. There
13 are many other issues that plaintiffs have focused on and
14 articulated over the years, and in my mind I'm not ruling out
15 the possibility of the Court being confronted with getting still
16 another motion for injunctive relief for arguably compelling
17 reasons. If that happens -- well, just focus on what's before
18 the Court now. If the Court were to carve out some time now to
19 focus on this motion, that would be this case that's been around
20 for seven years is all of a sudden elevated to this Court's
21 focus of attention over other cases just as compelling if not
22 more so, involving people who are incarcerated, and I don't
23 think anyone would argue that the rights of someone incarcerated
24 or controversies involving the rights of people incarcerated are
25 far more compelling than civil cases, but it would mean the

1 Court would have to carve out time to focus on this case, which
2 could prompt the Court to do a couple of things. The Court
3 could be persuaded or the Court might on its own appoint a
4 master, someone either inside the court or outside the court, at
5 the parties' expense to consider the evidence advancing the
6 request for injunctive relief and opposing the request for
7 injunctive relief and then reporting back to the Court, or the
8 Court could on its own carve out the time which would be
9 difficult to focus on this for injunctive relief. I don't see
10 it happening. I don't see a hearing occurring under either
11 scenario before July or so. In fairness to the defendant being
12 afforded a fair opportunity to respond and in fairness to the
13 Court being able to sift through this binder of materials, I
14 didn't focus on the CDs or the DVDs that accompanied it, and
15 then the Court has to be mindful that whatever the Court does
16 with respect to this request for injunctive relief on one very
17 precise issue, whatever the Court does, is appealable to the
18 Circuit and if there were to be an appeal, I'm certain that
19 there would be regardless of how this Court rules, then what
20 this Court would in all likelihood do is stay the proceedings,
21 all the proceedings, with respect to the myriad other issues
22 raised by the plaintiffs until the Circuit has had its fair
23 opportunity to consider whether this Court was correct or not
24 correct, which means that sometime later, how much later no one
25 knows, and we assemble again and try to pick -- not try to. We

1 would resume with this litigation maybe a year from now, two
2 years from now. That doesn't seem to be the appropriate thing
3 to do in a case of this nature.

4 The parties have invested all sorts of time, interest,
5 and money. The Court has its own resources as well as spending
6 the resources of its colleagues in trying to provide a fair
7 opportunity for the parties to litigate their issues, so it
8 doesn't seem to me to be the appropriate expenditure of scarce
9 judicial resources to carve out time to find out injunctive
10 relief on a case that was filed seven years ago, on one precise
11 issue. It seems to me that the better part of wisdom is to
12 focus on the trial of all the merits, a trial on the merits of
13 all the issues and at least bring about some finality in this
14 court during the month of October, so it's encouraging. I
15 didn't know what to expect about how much time the parties need
16 to wrap up discovery. I'm not only optimistic, I'm prepared to
17 say after a date certain in August there won't be any more
18 discovery and the Court will make its call and close discovery.
19 This case will be tried and a final ruling will be entered and
20 whoever is disappointed in the Court's ruling can take whatever
21 action that party believes is appropriate under the
22 circumstances, and there won't be any motions for summary
23 judgment. I can tell you that now. This is a nonjury case and
24 the Court's not going to require the parties to file motions for
25 summary judgment, nor will the Court focus its attention on

1 trying to resolve motions for summary judgment over the next
2 year, year-and-a-half. There will be a trial. I'm not aware of
3 any reason why this case is jury-tryable. On all accounts it's
4 a nonjury case. I know there was some overtures made about the
5 jury-tryable aspects of this case, but I believe this is a
6 nonjury trial, but it raises another question. If indeed it's a
7 nonjury trial and the parties seriously disagree as to whether
8 it's a non-jury trial, query whether the Court would certify
9 that issue to the Court of Appeals and resume this litigation
10 whenever it's appropriate to do so, so there are a few issues of
11 law that confront this Court, putting aside this request for
12 injunctive relief, which I would prefer not to have devote
13 resources to now. I think it's high time to try this case,
14 bring about finality in this court, let the chips fall where
15 they may, and provide the parties an opportunity to pursue
16 further litigation if appropriate in a different court.

17 So I'm looking at October 1 for a trial. And I've
18 said a lot. I know I've said a lot, and I want you to be
19 afforded an opportunity to respond to what I just said and I
20 want Judge Facciola to chime in, and I don't know whether he's
21 available to try the case or has any interest in trying the
22 case, but I'm not ruling that out as a possibility either. So I
23 invite your comments.

24 MS. JOINER: That proposal makes sense to us. If we
25 could wrap the discovery up this summer.

1 the plaintiffs strongly believe that this is a jury-tryable
2 case?

3 MS. MEYER: No, your Honor. We don't think it's a
4 jury.

5 THE COURT: This, I think, is the closest both sides
6 have been on this issue.

7 MAGISTRATE FACCIOLA: Did someone note the time?

8 MS. MEYER: I can agree to something else, your Honor.
9 We also would like to have a trial the first week of October.

10 THE COURT: I was just making my record. I wasn't
11 being critical of anyone.

12 MS. MEYER: I understand, your Honor.

13 THE COURT: The couple of hours we've had such a
14 thing, you start thinking about motions for summary judgment,
15 you start thinking about this being a precursor for the
16 remaining issues, and it doesn't make a lot of sense for this
17 Court to be tied down with summary judgment motions when the
18 better part of wisdom is to get your briefs on these issues, to
19 take testimony, to deal with whatever legal issues are raised,
20 as opposed to being tied down to summary judgment. I'm just
21 trying to provide a basis to get this case over with now, and
22 maybe I don't want to go so far as to say maybe it's great you
23 filed this motion. I'm not going to be that generous, but you
24 did file it and you have my attention and I called Judge
25 Facciola, and among other things I said it's time to bring about

1 some finality in this court.

2 Now, could you live with that, a trial in October --

3 MS. MEYER: If we did --

4 THE COURT: -- and forego this?

5 MS. MEYER: The question is if we had a date, your
6 Honor. Our concern has been there's been no trial date and this
7 case is tending to fill up the space and go on and on and on,
8 and that's why we felt we really had do something now that we
9 can prove that claim with their own evidence. That's why we did
10 it, your Honor.

11 MAGISTRATE FACCIOLA: The judge would be interested in
12 how would you estimate the length of your case, how many weeks?

13 MS. MEYER: Our case?

14 THE COURT: How many days?

15 MS. MEYER: I'd say two weeks, maybe a week-and-a-half
16 if we were streamlining.

17 MAGISTRATE FACCIOLA: Defendants about the same amount
18 of time?

19 MS. JOINER: Yes, your Honor.

20 MAGISTRATE FACCIOLA: And then some time for rebuttal,
21 right?

22 MS. JOINER: Correct.

23 THE COURT: Maybe four to six weeks total.

24 MAGISTRATE FACCIOLA: In terms of the witnesses that
25 the depositions have already been taken, are they videotape?