

**EMI MUSIC PUBLISHING LIMITED v PAPATHANASIOU  
AND OTHERS**

HIGH COURT, CHANCERY DIVISION

WHITFORD J

18 FEBRUARY 1987

*Copyright — infringement — musical work — Chariots of Fire theme — whether deliberately copied from plaintiffs' work — whether subconsciously copied — whether plaintiffs had title to copyright — whether defendants innocent — action dismissed.*

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**HEADNOTE**

The plaintiffs claimed ownership of the copyright in the theme music for a television series entitled 'The City of Violets' broadcast in Greece in 1975. It was conceded by the defendants that the melody of 'City of Violets' was an original work composed by one L. The plaintiffs alleged that the 'City of Violets' theme had been deliberately or subconsciously copied by the first defendant (professionally known as Vangelis) in his theme music for the film 'Chariots of Fire'. The first defendant denied that he was aware of 'City of Violets' at the time he composed 'Chariots of Fire'. In support of the allegation of copying the plaintiffs relied on the fact that a sequence of four notes (the 'turn') was to be found in both 'City of Violets' and 'Chariots of Fire' and on an alleged similarity between the B sections of the two pieces.

In support of the allegation of ownership of copyright the plaintiffs relied in the alternative on two chains of title. The first was that, under an agreement between I and a band of which L had been a member I had acquired all the rights to 'City of Violets' although L had composed this after the band had been dissolved. The second was that, under an agreement between L and PE, L had transferred the rights to 'City of Violets' to PE, PE had orally transferred the rights to PO and PO had assigned the rights to E, an associated company of the plaintiffs.

**Held**, dismissing the action:

1. There had been no conscious copying by Vangelis.
2. Assuming that the melody of 'City of Violets' had been played to Vangelis and had been retained by him in his subconscious memory, all he could be said to have retrieved was the 'turn'. The B sections of the two pieces presented no similarity to the ear. The 'turn' was a musical commonplace and had been used by Vangelis himself before the composition of 'City of Violets' by L. That musical commonplace had to be considered in the context of the two themes taken in their entirety. 'City of Violets' was nostalgic whereas 'Chariots of Fire' was a striving piece. It was therefore impossible to conclude that there had been subconscious copying.
3. The plaintiffs had not acquired title to the copyright. The rights of I under the agreement with the band were confined to works which had been recorded under the agreement. Since there was no written assignment of the copyright from PE to PO there had been no effective transfer of the UK copyright to PO and PO could not transfer it to E.
4. The second defendant not having called any evidence, a defence of innocence would not have been available to the second defendant. There would have been a defence of innocence open to the third and fourth defendants up to February 1984. Had there been deliberate copying there would have been no question of innocence of the first defendant. If there had been subconscious copying there would have been a defence of innocence up to July 1983 when he became aware of the possible position.

**Case referred to**

*Francis Day & Hunter Ltd v Bron* [1963] 1 Ch. 587

**Legislation referred to**

Copyright Act 1956 section 36

**Representation**

Andrew Morritt QC, Charles Gray QC and Richard Parsons, instructed by Joynson-Hicks, for the plaintiffs.

Robin Jacob QC, Anthony Hooper and Mark Platts-Mills, instructed by Apfel & Co. for the first defendant and instructed by Denton Hall Burgin & Warrens for the second to fourth defendants.

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## TEXT OF DECISION

### **Whitford J:**

The plaintiffs in this action, EMI Music Publishing Limited, are one of a group of companies which includes what Mr Jacob described as a sister company, EMI Records Limited, and a company, KPM Music Limited, aptly described by Mr Morritt as a grandson of the plaintiffs.

It is an action in which the plaintiffs, by their re-re-amended Statement of Claim, are asserting infringement of copyright in what they claim to be an original musical work composed by Mr Stavros Logarides. The plaintiffs claim title, either by assignment from a Greek company, Intersong-Hellas, or from a Greek partnership, Pantas OE. The work in which copyright is claimed is a work identified in the Statement of Claim as I MENEXEDENIA POLITEIA, in English THE CITY OF VIOLETS. In the course of the hearing, both the Greek and English form of title were variously used by Counsel and witnesses. I shall use the English version, with this added qualification: CITY OF VIOLETS was in truth the title of a television series broadcast in Greece in 1975. There were some twenty to thirty episodes, and the relevant work was used as the musical accompaniment to the titles. There was other music, with which this action is not concerned.

I am satisfied that the CITY OF VIOLETS title theme was broadcast during the showing of the episodes, at the beginning and end of each episode. It is no longer in dispute that the melody of the CITY OF VIOLETS theme was indeed the original work of Mr Logarides. I am not satisfied that he was responsible for more than the melody, and it was not seriously suggested by any expert that the fairly conventional accompanying bass was of any significance. I certainly did not find it to be of any significance.

So, subject to proof of title, EMI are properly plaintiffs.

A point was originally taken by which it was suggested that the assignments were bad, on the grounds that they savoured of champerty and maintenance, but this was a point which was not, in the end, pursued.

There are four defendants. The first defendant, Mr Evangelos Papathanasiou, professionally known as Vangelis and so referred to throughout the proceedings, composes music. Mr Vangelis composed

the theme for the film CHARIOTS OF FIRE. Both the film and the music were very successful. Mr Vangelis got an Oscar award for the music. It is the opening theme of the CHARIOTS OF FIRE music that is alleged to infringe the CITY OF VIOLETS title theme. In his defence, Mr Vangelis denies copying. He asserts that at the time he composed the CHARIOTS OF FIRE music he was not aware of the CITY OF VIOLETS theme.

Mr Vangelis is a composer of international repute. Tributes were paid by witnesses on both sides to Mr Vangelis' ability and reputation and standing as a composer, and it is obviously of first importance to Mr Vangelis that the plaintiffs' assertion that he quite deliberately copied the CITY OF VIOLETS theme and used it for CHARIOTS OF FIRE, or, at the very least, subconsciously copied the CITY OF VIOLETS theme, should be dealt with first.

I shall accordingly start by assuming that the plaintiff's title is a good one, going straight to what I think it was accepted on all sides is the main issue.

The CHARIOTS OF FIRE music has been transcribed into the same key, C major, as the CITY OF VIOLETS, for convenience of comparison. CHARIOTS OF FIRE was originally written in D flat major. It is immediately apparent from a comparison of the scores that if one takes the top line that provides the melody, there are considerable differences. Mr Cooper and Mr Dodgson, the experts who gave evidence on behalf of the plaintiff, in their first reports concentrated their attention upon the four notes F G A G, linking Bars 1 and 2 in CITY OF VIOLETS. These were described by Mr Dodgson in his report as 'the turn'. Both Mr Dodgson and Mr Cooper quite rightly point out that an identical turn can be identified at Bars 11 and 12 of CHARIOTS OF FIRE, and everyone is agreed that in both works there are repetitions of 'the turn'. There is an immediate repeat in Bars 3 and 4 of CITY OF VIOLETS, with the CHARIOTS OF FIRE repeat bridging Bars 12 and 13, followed by three subsequent repeats. This part of these works, conveniently referred to by Mr Dodgson as Part A, is followed by a B section, a development section, which initially neither Mr Dodgson nor Mr Cooper seemed to think of any significance.

Guidance on the proper approach to the question of infringement in music copyright cases is to be found in the judgments of Wilberforce J and the Court of Appeal in the case of *Francis Day & Hunter Ltd v Bron* [1963] 1 Ch. 587. It was a case in which the expert witnesses on both sides accepted, as they do here, a degree of similarity. They differed on the degree of similarity. In his judgment, Wilberforce J said:

In endeavouring to reach an approach which is neither too superficial nor unduly academic or technical, I think I must to some extent rely on my own aural judgment, instructed as it has been by these various experts. As it was put by Professor Neiman, 'The public has a purer approach to music than the critics'. That, of course, does not mean that one must discount the help that the critics can give, but I think I must rely on the ear as well as on the eye, and on the spoken words of the witnesses.

Wilmer LJ, having commented on certain difficulties, observed in the course of his judgment:

... when the two songs were played to us, it was immediately apparent to me at any rate, that the effect on the ear was one of noticeable similarity. This is a matter which is not without importance, for, as was pointed out by Astbury J in *Austin v Columbia Gramophone Co Ltd*, 'infringement of copyright in music is not a question of note for comparison', but falls to be determined 'by the ear as well as by the eye'.

I was naturally enough asked by Mr Morritt to listen to these two works at an early stage, and was indeed given a cassette which has made it possible for me to listen to both works again. On hearing these two works for the first time, I was at once struck by the identity of 'the turn', as indeed was Dr Bush who gave evidence for the defendants.

In his first report, Dr Bush observes,

There is common ground in as much as we are all agreed in recognising some sort of family resemblance between parts of CHARIOTS OF FIRE and of CITY OF VIOLETS. Disagreement centres on the extent of the resemblance and the cause of the resemblance.

For my own part, on first hearing both works, what struck me was that if one considers what Mr Dodgson referred to as 'the motif' of CITY OF VIOLETS, the whole of Bars 1 and 2, you have this very distinctive drop of a sixth from E to G preceding 'the turn', followed by a rise to middle C after the turn. In CHARIOTS OF FIRE you start with a repetition, against a throbbing bass, of the notes low C to G which generally speaking give the effect of a horn call, and this leads into a passage in which you rise from low C to 'the turn', F G A G, the second and third notes of the turn of course echoing the horn theme. This is followed by a drop.

As was pointed out in *Francis Day & Hunter*, the existence of a resemblance is not in itself proof of copying. Indeed, even if there is identity, copying does not necessarily follow, though in the case of identity there may be a question of shift in the burden of proof. This is not a case where there is identity.

It was Mr Morrith's submission that the most important issue in this case was whether a Miss Ariadne Mackinnon-Andrew played the CITY OF VIOLETS theme to Mr Vangelis several times in the summer of 1975. Further, that her evidence should be accepted that Mr Vangelis expressed interest in the CITY OF VIOLETS music, and asked for tapes of it. This evidence was to some extent supported by evidence given by Mr Logarides. It was Mr Morrith's submission that this was the most important issue, because Mr Vangelis denied having even met Miss Mackinnon-Andrew in 1975. If I were to reject the evidence of Mr Vangelis and accept the evidence of Miss Mackinnon-Andrew on this point, Mr Morrith submitted, the inference must be that Mr Vangelis, being concerned to reject the suggestion that there was any opportunity for copying, was lying, because the opportunity was not only there, it was used.

*The learned judge considered the evidence and continued:*

As Mr Morrith quite rightly observed on the issue of conscious copying, the resolution of the issue depends upon my view of the facts. I have seen and observed, as well as heard, the relevant witnesses. I am in no doubt that the evidence of Mr Logarides, unless corroborated by something other than the evidence of Miss Mackinnon-Andrew, is not to be relied upon; nor is the evidence of Miss Mackinnon-Andrew, if the only corroboration of her evidence is the evidence of Mr Logarides.

I accept without reservation the evidence of Mr Vangelis that he never met Miss Mackinnon-Andrew in 1975. He quite readily accepted meeting her in 1976; had he met her in 1975, he would undoubtedly have recalled this fact when he met her in 1976. Of course, at such a distance of time as we are here speaking of, memory is bound to be in some respects fallible. I think it right to say that probably the visit in 1975 and the visit in 1976 would have been of rather more concern to Mr Logarides and Miss Mackinnon-Andrew than to Mr Vangelis, and to that extent one might have anticipated that they would perhaps have

some better recollection of what took place. That Mr Vangelis only had a very hazy recollection, except for perhaps incidents of a somewhat unusual nature, is understandable enough.

I have said that I am reluctant to accept the uncorroborated evidence of Mr Logarides but, if I could just go back to the incident of the arrows, I would say this: the carrying of arrows from the flat of a musician of the stature of Mr Vangelis to his studio would have been an incident so curious that I have little doubt that it in fact happened. As to the playing of tapes containing CITY OF VIOLETS, I am uncertain whether Mr Vangelis had a tape including CITY OF VIOLETS in 1975, though he may have. Mr Vangelis accepted that Mr Logarides played him a tape in 1975, and recalled that it had on it a piece by the name of ARABIAN KNIFE, and it was that curious name that stuck in Mr Vangelis' memory. Mr Vangelis told me that he had no recollection of hearing CITY OF VIOLETS.

It was the evidence of Mr Vangelis that in 1975 Mr Logarides came to him because he wanted to see whether Mr Vangelis would be prepared to enter into collaboration with him as a singer. This much was denied by Mr Logarides. Mr Vangelis said that the tape which he heard was a tape which included songs, and whether it included any other music is a matter which, as I say, must remain uncertain. At the end of the day however it seems to me at least not unlikely that he heard the CITY OF VIOLETS theme, either in 1975 or in 1976. I reject entirely any suggestion that he asked to be given tapes carrying the CITY OF VIOLETS theme, expressed interest in it, or played variations on it.

That Mr Vangelis was not infrequently visited by Greek musicians who hoped perhaps to get some assistance from him is not in dispute. That these visiting musicians would have played him examples of their work on tape or possibly some instrument appears to me to be highly probable.

I am unable to understand, even if the CITY OF VIOLETS music was played in the presence of Mr Vangelis in 1975 or 1976, why, in the absence of any acceptable evidence that it was of particular interest to him, he should have remembered this theme, which, in chief, Mr Logarides told me he himself did not recall with any certainty at the time when he first heard CHARIOTS OF FIRE, for it can be no more than one of what must have been a very large number of pieces played to Mr

Vangelis by Greek musicians over a period of years. I revert to the fact that when Mr Logarides first heard the CHARIOTS OF FIRE music, on his evidence, in September 1982, it did not immediately bring CITY OF VIOLETS to his mind. Mr Logarides told me by way of explanation that he had composed some three hundred pieces — although this might be an exaggeration — between the time when he wrote CITY OF VIOLETS and the time when he first heard CHARIOTS OF FIRE, and I understood him to suggest that this was why his recollection of CITY OF VIOLETS was not all that acute. CITY OF VIOLETS was not, I am satisfied, a piece likely to be of any great significance to Mr Vangelis, or no significance greater than that of a large number of other compositions of his own and other composers which, in the years between 1975 and 1976 and the date of composing the CHARIOTS OF FIRE music he must have heard.

I have no hesitation in rejecting the suggestion that this was a case where there was conscious copying. There remains, however, the other line of attack put forward, though not perhaps pressed quite so hard, of sub-conscious copying.

Let me assume that what Mr Dodgson described as ‘the motif’ — the seven-note sequence in the first two bars of CITY OF VIOLETS — having been played to Mr Vangelis, was retained in his subconscious memory. At the most, all that he can be said to have retrieved is the ‘turn’. Now, the turn is a musical commonplace. Innumerable examples were produced by Mr Protheroe, the defendants’ second expert witness. Mr Vangelis had himself used the turn long before the composition of CITY OF VIOLETS by Mr Logarides, and I was referred to one example where we get the turn in a song composed by Mr Vangelis called WAKE UP. When heard as recorded on cassette, it needs a fairly acute ear to identify the turn, although if the melody is played on the piano it is identified easily enough.

Mr Dodgson, when he wrote his first report, does not seem to have recalled the fact that the turn can fairly be described as a musical commonplace, but accepted without reservation when this was pointed out to him in the defendants’ evidence that this was in truth the case. It was perhaps for this reason that he abandoned his original assertion that the motif was the only memorable feature of CITY OF VIOLETS, and, in his second report, seeks to find some resemblance in the respective B sections.



I do not propose to go into a great deal of detail about the B sections. To the ear, the B sections present no similarity. It was upon this basis no doubt that Mr Cooper, when he made his first report, specifically rejected any possibility of there being suggested to me a similarity in the B sections. I think in the end it was agreed that to the ear the B section presents no similarity. Mr Cooper is something of a specialist in the field of making two pieces of music sound not dissimilar. When he wrote his first report, he had in fact tried to find a resemblance between the respective B sections, and had given it up. He also agreed that people who could not read music (and Mr Vangelis is of this number) could never get as far as even beginning to make out any possibility of a connection between the respective B sections.

In his second report, Dr Bush deals with Mr Dodgson's second report, saying this:

Dodgson's second report is partly notable for what it omits. It makes no attempt to refute my demonstration that coincidence is every bit as likely an explanation as copying (with my own work *In Praise of Mary* used as an illustration);

— a work in which the turn is undoubtedly to be found, being a composition of Dr Bush's —

or that other, prior sources of the principal motif exist. I can only assume that he accepts these contentions

— well, he did.

Dodgson's new claim (that the B section of CV has been borrowed for the B section of CF) is flawed by an elementary error. Music is not seen: it is heard. The alleged resemblance was never noticed by the experts to whom the tunes were shown, and by whom they were studied at length. Moreover, Dodgson began himself by denying the resemblance. Why? For the very good reason that there *is* no audible similarity. It is a purely notational exercise (as is borne out by Cooper's phrase 'visual likeness')

— and there is a reference to his report.

So far as the B sections are concerned, I do not propose to go further.

Having considered the scores, having heard the two themes played, having considered the evidence of the experts, I am satisfied that if there is a resemblance it is only in the turn, and that this was a result of coincidence and not the result of subconscious copying.

Other aspects of these two themes have to be brought into consideration when the question 'Has there been copying?' falls to be determined. The turn, this musical commonplace, has to be considered in the context of the two themes, taken in their entirety.

It was not disputed that, being unable to read or write music, Mr Vangelis proceeds to compose by sitting down and playing on a keyboard and synthesisers. Mr Vangelis was asked to compose music for CHARIOTS OF FIRE. He was originally given a video with a musical accompaniment to it; the musical accompaniment was a piece called L'ENFANT, of Mr Vangelis' composition. It was, I think, thought that it might give him some idea of what those who were making the film considered would be generally appropriate — but beyond that, it is not to my view of any significance. I have, of course, heard it. For use in connection with composing the music, he was given a video without sound. He put this on, and he sat down and started to compose. His evidence as to the way in which he does this came out very clearly. In a passage in his cross-examination Mr Morrith asked him:

- Q. Then, was it in 1979 or 1980 that you composed CHARIOTS OF FIRE? A. Composed CHARIOTS OF FIRE during the recording of the music or the film, the film was 1980.
- Q. As I understand it, you had the film on video? A. Yes.
- Q. And you had your synthesisers with video monitors all round the room? A. Yes.
- Q. And is this right — the sound track was turned off? A. The sound track?
- Q. Of the film. A. Yes.
- Q. So you merely had the images, no sound? A. Just the images, yes. I am not sure if I had the images or some noises without sound; I can't remember.
- Q. At any event, you did not sit there with L'ENFANT playing at the time? A. Yes.
- Q. The film was silent? A. The working thing was silent but the copy I had before me was with L'ENFANT.

- Q. And you told his Lordship that as before it just came out of your head and you played it? A. Just like I always do.
- Q. It is the case, isn't it, that part of it sounds very similar to CITY OF VIOLETS? A. Only four notes are similar.
- Q. You say only four notes sound similar? A. Yes.
- Q. What do you say about the harmony? A. Yes, the harmony where the four notes are is similar, yes.
- Q. And the tempo? A. No, the tempo is not; it's different.
- Q. Did you think at the time that you were composing that this might be released as a record with a singer? A. Not at the time. No.
- Q. But it is always possible, isn't it, that film music will be — some lyrics? A. Maybe, yes, maybe not.
- Q. And you would not therefore wish to have a descending sixth; your instinctive reaction would be to come up on a rising scale? A. I don't understand what you say.
- Q. In order to sing it you would not come down from a much higher note towards the turn, would you? A. Sorry, I don't understand you.
- Q. And you just played it straight off, did you? A. Yes.
- Q. So it must have been in your head already? A. I don't know what — I can't biologically explain what happens. I can demonstrate to you any time. What comes first I don't know; it is just a split second maybe between my brain and my fingers.
- Q. How long did it take altogether? A. To do what?
- Q. To compose the title music? A. To compose it, it took the time to play it; to record the whole thing, it took more, of course.
- Q. What did you do when you first played it: did you record what you first played? A. Yes.
- Q. So there would be a tape of that somewhere? A. Of course there is.
- Q. Of just you playing on the piano? A. No, not on the piano — whatever I had around.
- Q. What did you have around you? A. Similar things, as I have said.
- Q. Can you be more precise of what you did have? A. I had the piano and three or four synthesisers around me.
- Q. Was somebody else with you at the time? A. Yes.
- Q. Your recording engineer? A. Yes.
- Q. You just composed it and he recorded it then and there? A. Yes.

Mr Morrith then went on to ask Mr Vangelis about the track sheets, and about the tape. On this, Mr Vangelis was of absolutely no assistance — as indeed was the case when he was cross-examined about other track sheets and about accounts which might possibly have thrown some light on the question of the attempt to make a recording in 1976. On Mr Vangelis' evidence I am satisfied that as far as track sheets and accounts are concerned, he leaves it to others. I entirely accept that Mr Vangelis sat down and composed the CHARIOTS OF FIRE music in the way that he described, and I agree with Dr Bush's analysis of the relevant passages of CITY OF VIOLETS and CHARIOTS OF FIRE in his first report.

For my own part, I would put it in this way. CITY OF VIOLETS is nostalgic: the mood is set not by the turn but the drop from E to G, not even considered by Mr Cooper in making his first report — this, it will be recalled, was the report in which he said in terms that the B sections were entirely different; that they were scarcely considered by Mr Dodgson is a factor of importance. CHARIOTS OF FIRE cannot, in my view, be described in any way as 'nostalgic'. It is a striving piece: the mood is set by the horn call, and the turn is a straightforward development of the horn call. From this indeed the B section in its turn develops.

So, taking it over all, I find, as I have already indicated, that it is really quite impossible to conclude that there was — notwithstanding the resemblance arising from the employment by both composers of a commonplace element — even subconscious copying.

There was a great deal of evidence, to which I have made absolutely no reference whatsoever, exposing areas of uncertainty, most of which were really only of marginal relevance — if, indeed, they were of any relevance at all. There was, however, one other aspect of the evidence to which I shall make brief reference.

Although the publication and playing of the CHARIOTS OF FIRE music was no doubt on a fairly extensive scale in Greece, it seems to have struck no immediate chord in the minds of those who knew the CITY OF

VIOLETS music there. There were persons who felt that the CHARIOTS OF FIRE theme recalled something to their mind. When Mr Logarides heard the two pieces played one after the other, I have no doubt that he at that stage formed the view that CHARIOTS OF FIRE had been copied by Mr Vangelis from his work CITY OF VIOLETS. He had seen Mr Vangelis in 1975 and 1976, and no doubt had some recollection of having played CITY OF VIOLETS to Mr Vangelis, possibly with the aid of Miss Mackinnon-Andrew; and in the course of discussions with her, which they both accepted took place starting back in 1983, embellishments have been added to their tale, to put a gloss on the plaintiffs' case, which at best can only be described as figments of their joint imaginations.

That brings me to title. The plaintiffs are EMI — not Mr Logarides, EMI; and indeed EMI Records have entered into a number of agreements with Mr Logarides, under one of which he would have been entitled, subject to deduction of expenses, to 50 per cent of the damages which EMI might have recovered had this action succeeded.

Whatever benefits may have come to others from CHARIOTS OF FIRE, it has undoubtedly brought some not inconsiderable benefit to the legal profession. There are other people who are claiming that the music of CHARIOTS OF FIRE was copied by Mr Vangelis from some work of theirs. In their turn, Warner Bros. as assignees of the copyright of CHARIOTS OF FIRE music have brought proceedings for infringement of the CHARIOTS OF FIRE music. It was the bringing of an action in April of 1983 against KPM Music Limited which first brought the existence of CITY OF VIOLETS to the attention of EMI. This action was brought against KPM for infringement arising out of the use of what was alleged to be, and in the end obviously accepted as being, a copy of Mr Vangelis' music in connection with an advertisement for shoes. Having heard a suggestion that the CHARIOTS OF FIRE theme was based on original Greek music, EMI set enquiries on foot which eventually led them to Mr Logarides and CITY OF VIOLETS. EMI then decided to purchase the rights in CITY OF VIOLETS primarily, in the initial stages, as a bargaining counter for the achievement of a satisfactory settlement in connection with the KPM action. In the end, however, so far as that action was concerned, they paid a sum in settlement; that having been done, the present action was proceeded with.

EMI's stance on title has changed from time to time, and the question of title is in truth, on the conclusions which I have reached on the question of copying, perhaps only of academic interest. In the end, it was not argued at great length, but I must deal with it as shortly as I can.

Mr Morritt's preferred route on title is an agreement entered into between, on the face of it, the Greek company Intersong Hellas and a Mr C Tournas and a Mr R Williams, described in the agreement as 'The Band'. The agreement was at some stage signed by Mr Logarides, who for a short period was a member of the Band. Clause 1 is in these terms:

Those second of the parties here contracting C TOURNAS and R WILLIAMS, subsequently in this document, for the sake of brevity, called 'the band', under the terms below, *give* to the first of those here contracting 'INTERSONG HELLAS E P E', hereafter for brevity called 'the Company', for Greece and abroad, the exclusiveness of their recordings, with a view to their reproduction on gramophone records or magnetic tapes.

It was agreed — because there seems to have been some omission — that the first sentence of the next succeeding paragraph ought to be preceded by the number '2'. That makes Clause 2 read:

The Company acquires full right of ownership and exploitation of the musical compositions recorded and pressed onto gramophone records.

At this point there should be a '3' inserted before the next sentence. I do not propose to read Clause 3, which deals with royalties.

I can pass over the numbered clauses until we come to Clauses 11 and 12, which are in these terms:

11. Beyond the above exclusive granting of the recordings, the Band cedes to the Company through this document, finally and irrevocably, for all the countries of the world, the full ownership and exclusive exploitation of all its musical compositions. This ceding also acts individually for each member of the Band with the consequence that it continues to apply in favour of the Company after the dissolution of the Band or the departure from it of a member. The Band declares, also, through this document that the ceded musical works are originals and

do not infringe the rights of any third party. 12. The above ceding is meant in the broadest sense of the word so as to *allow* the fullest possible exploitation of the work. Thus the Company has the (right) absolute and exclusive right, for all the countries of the world *to* publish these musical works, republish, translate, adapt for *any* instrument, sell, cede, modify the title, text or music, to *transfer* the use in any way to another, the *listing* in this document not being definitive.

I pass now to Clause 15. It is in these terms:

15. Beyond the above (articles 12 following) ceding, which being final and irrevocable, is valid *for ever*, the duration of the validity of the obligation of the Band of exclusive recording for the account of the Company (article 1) is agreed to be five years, beginning today and ending on 1/2/76.

The plaintiff's case is that when Mr Logarides signed this agreement, Clause 11 became effective to transfer to Intersong Hellas all Mr Logarides' rights in works composed by Mr Logarides, whether recorded by Intersong Hellas or not, or whether composed during the currency of the agreement or subsequently thereto, without limit of time. This, to my mind faintly astonishing, suggestion was supported by Mr Melas, a Greek attorney skilled in the intellectual property field, although it is fair to say that Mr Melas did tell me that he thought that in appropriate circumstances, notwithstanding the width of this term, in the Greek courts it might be possible to secure some imposition of a time limit, and I think he suggested something of the order of ten years.

It was Mr Melas' view, as expressed in his report, and as he put it to me in the evidence which he gave before me, that although CITY OF VIOLETS was composed by Mr Logarides in October 1974, after the Band had been dissolved, Intersong Hellas acquired all rights in CITY OF VIOLETS, in the light in particular of the express terms of Clauses 11 and 15. Mr Gramatitides, the defendants' expert in Greek law, a man as well qualified in the relevant field of law as Mr Melas, took a different view, both in his report and in giving evidence before me. It was his view that the rights of Intersong Hellas were confined to works which were recorded. I note in passing that, although this agreement was Mr Morrill's preferred route to title, it only became a possible route following the re-re-amendment of the Statement of Claim for which I gave leave at the start of the hearing of this action.

If this route fails, Mr Morrith's second line is through an agreement made on the 5 February 1976 between the Greek company Pantas EPE and Mr Logarides.

Mr Logarides is described as the 'Musician', Pantas EPE as the 'Producer', and the relevant part of the agreement is in these terms:

The first of the contracting parties, the Producer, appoints the second of the contracting parties, the Musician, to record music for the work (serial) which is being video-recorded under the title 'Menexedenia Politeia', under the following specific terms and agreements:

The Musician shall be required to compose all the musical accompaniment for the televised work bearing the title 'Menexedenia Politeia', and also the music for the songs which he is to perform in the same work. The producer shall be required to pay the recording-studio expenses. For his services in completing the work, the Musician shall receive the sum of 30,000 drachmas, which he shall receive in instalments as follows:

and the instalments are set out; then,

'The [word omitted in the original] —

and I think it would have to be 'Musician'

— shall be required to bring all the necessary instruments for the performance of his work. The Musician shall be required, at his own expense, to pay the musicians which he uses for execution of the work. It is expressly agreed that the second of the contracting parties, the Musician, transfers the rights to the aforesaid work to the first of the contracting parties, the Producer, who may use the said work wherever he wishes.

Here we have Mr Logarides being commissioned to compose and perform the CITY OF VIOLETS music, and agreeing to transfer the rights in the music to Pantas EPE. Pantas EPE sold its rights in the work to a partnership, Pantas OE. This was a partnership between two brothers, Mr Michael Pantas-Yiatsoglou, apparently known as Lakis, and a Mr Makis Pantas-Yiatsoglou. They at all material times, together with a Mr Simonetatos, held the shares in Pantas EPE. I have heard evidence here from Mr Michael Pantas-Yiatsoglou and Mr Simonetatos.



It was Mr Michael Pantas-Yiatsoglou's evidence that in 1976 EPE's rights in CITY OF VIOLETS were orally transferred to Pantas OE. There was no written assignment of the copyright, and Mr Morrith did not challenge Mr Jacob's submission that having regard to the provisions of section 36 of the Copyright Act there was no effective transfer of the copyright in this country to Pantas OE. I would add in passing that Mr Morrith indeed used s.36 as a counter to the claim in the Defence, not pressed in argument by Mr Jacob, that the copyright had in fact been transferred by Pantas to the Greek television company, EIRT.

Mr Morrith countered Mr Jacob's submission that EMI could never have acquired a valid title through Pantas by referring me to an agreement of 4 January 1985. In this agreement, EMI AL, a Greek offspring of EMI, is described as 'the Purchaser', and Pantas OE as 'the seller'. EPE, at this stage in liquidation, are a party to the agreement, as are the brothers Pantas-Yiatsoglou in an individual capacity, and as is Mr Logarides. There is reference not only to the agreement of the 5 February to which I have expressly referred, but also to an agreement between Mr Logarides and Pantas EPE of the 16 May, to which I have made no specific reference as for present purposes it does not appear to be material.

If, of course, Mr Morrith is right on the Intersong Hellas agreement, all these subsequent agreements were meaningless. It may seem a little strange that Intersong Hellas appear never to have laid claim to the CITY OF VIOLETS, but let me assume that Mr Morrith is wrong, and that when Mr Logarides entered into the January agreement he rightly believed that he held the rights which he initially purported to transfer to EPE.

If we go to Clause 5 of the January 1985 agreement, Clause 5 I merely recites the transfer of Mr Logarides' interests to EPE. Clause 5 II is an acknowledgement of the fact that all rights were transferred from EPE to OE in 1976, and Clause 5 III is in these terms:

By the present the Seller, today sells, assigns and transfers the whole of the Soundtrack and all such rights in the music as may have been transferred to or become vested in the EPE under the agreements referred to in Clause I above, whether accrued, present or future, including the right to record and perform the music as part of the Soundtrack, to the

Purchaser who, as it is explicitly agreed upon, thus acquires the exclusive right of the music's worldwide exploitation, which includes the right of reproduction by records, cassettes, cartridges and by any other means of sound reproduction with or without picture, that now exists or may be invented in the future. At the same time the Seller hands over to the Purchaser all the master tapes of the Soundtrack in his possession.

But the seller, Pantas OE, had never acquired the copyright for this country, and could not sell it. The liquidators do not purport to sell, and Mr Logarides does not purport to sell.

So, leaving out of consideration certain difficulties which to my mind might arise on Clause 5 V, which I do not propose to read, it is my view that the Pantas route necessarily fails.

It was Mr Morritt's suggestion that it was inconceivable that any of the parties to this agreement should turn round and say that they were sorry, they had the rights, but had in fact failed to give them to EMI AL. It may well be that it would not be open to the parties to the agreement to complain of any activities of EMI AL in connection with the exploitation of CITY OF VIOLETS, but only Pantas OE sold anything, and they could not have sold the relevant rights because, as I have said, they never had them.

That brings me back to Intersong Hellas. Left with the conflict between the experts, I would say that it appears to me that Mr Melas' interpretation of Clause 11 accords but ill with the agreement taken as a whole. Taken as a whole, it is an agreement which is really dealing with recording and recording rights. The interpretation of Mr Gramatitides is to my mind much more in accord with the general tenor of the agreement. I would therefore say that the plaintiffs have failed to satisfy me that at the material time they had acquired title to sue.

As to innocence, which is a matter which is even more academic, one starts of course from this: that on this the onus is on the defendants. The second defendants did not choose to call any evidence: a defence of innocence could not have been available to the second defendants. Having heard Mr Biederman of Warner Bros, although he could only

speaking from his study of the records, I am satisfied that there would have been a defence of innocence open to both the third and fourth defendants up to February, 1984. Had I been against Mr Vangelis on deliberate copying, there could of course be no question of innocence.

Subconscious copying raises a question of some difficulty. It was not really explored in depth in the course of argument, and I shall only say this about it: that I think in the end, as I believe Mr Morrill did, that had there been a finding of subconscious copying there would have been a defence open to Mr Vangelis up to a point in time in July 1983 when, with the institution of the Greek proceedings, he became aware of the possible position. In the end, however, the action fails, and must stand dismissed.

*Action dismissed with costs.*