



Neutral Citation Number: [2021] EWHC 1242 (IPEC)

Case No: IP 2016 000050

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY ENTERPRISE COURT (Ch D)

Rolls Building
Fetter Lane
London, EC4A 1NL
19 May 2021

Before :

MR JUSTICE MEADE

Between :

(1) NICHOLAS MARTIN
(2) BIG HAT STORIES LIMITED

Claimants

- and -

JULIA KOGAN

Defendant/Part
20 Claimant

- and -

(1) FLORENCE FILM LIMITED
(2) PATHÉ PRODUCTIONS LIMITED
(3) QWERTY FILMS LIMITED

Part 20 Defendants

Tom Richards (instructed by **Lee & Thompson LLP**) for the **Claimants**
Ashton Chantrielle and Beth Collett (instructed by **Keystone Law**) for the **Defendant**
Jonathan Hill (instructed by **Wiggin LLP**) for the **Part 20 Defendants**
Hearing dates: 12, 13 and 16 November 2020

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid 19 Protocol: This judgment is to be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be 19 May, 2021.

Mr Justice Meade:

1. In my main judgment in this action I found that Ms Kogan was an author, in the sense of the CDPA 1988, as to 20% of the screenplay for the film Florence Foster Jenkins (“the Film”). As against the Film Companies, the Part 20 Defendants, I found that they should arrange a credit on IMDb to reflect Ms Kogan’s work. They did not resist this in the event that I found she was an author.
2. At the consequential hearing before me on 26 April 2021, it was apparent that there was a disagreement between the Claimants and Ms Kogan about what that credit should be. The Film Companies had by then arranged a credit on IMDb which was, and currently is:

Writing Credits

[Nicholas Martin](#) ... (written by)

[Julia Kogan](#) ... (written by) (originally uncredited)

3. “Writing Credits” will appear on IMDb come what may; it is the section title on the web page and not created by user or IMDb input for the specific film.
4. The rest of the text is subject to user input and had been arrived at by the Film Companies applying the IMDb rules, which are to the effect that the credits will be as appeared on the screen when the film was played, but that exceptionally an “(originally uncredited)” will be given where there is later evidence – in this case my judgment – that someone else had input.
5. Ms Kogan submitted at the consequential hearing that no further investigation of the right credit was appropriate and that what the Film Companies had done should stand, or alternatively that I should decide the point there and then. I ordered instead that the Claimants and Ms Kogan should, sequentially and in that order, put in short written submissions. They have done that (and I received a short supplemental email from Counsel on behalf of the Claimants to which I refer below), and this is my ruling. The Film Companies remain neutral and IMDb has played no part; it is expected to do what the Film Companies ask following a ruling by me, and generally.
6. The parties referred to two sets of guidelines, one from the Writers Guild of American (“the WGA”) and one from the Writers Guild of Great Britain (“the WGGB”). Each set has written definitions and each Guild offers an arbitration service to determine their application. The guidelines’ respective definitions differ, including for the three relevant to my considerations, namely “Written by”, “Screenplay by”, and “Story by”.

7. In addition, as I say, IMDb has its own rules based primarily on what appeared on screen, although in some circumstances (not relevant here) it will apply the WGA rules.
8. Quite apart from the guidelines, I think it is very important that I have regard to the findings in my judgment. So far as possible the IMDb credits should accurately reflect my judgment, while having regard to the facts that:
 - i) The WGA, the WGGB and IMDb use their own definitions, so while as a freestanding matter “written” would be a good word to reflect the test of “authorship” in the CDPA, it does not follow that that word has the same connotation in the context of the Guilds’ guidelines, or IMDb;
 - ii) The IMDb credits are, with only slight flexibility, multiple choice. It is not possible to write a narrative text to capture the nuances of my judgment. If I thought all the choices were misleading I might not get involved in approving any of them, but I think they can usefully convey reasonably accurate information.
 - iii) People who want to know what my judgment said in detail can read it. I am dealing with trying to ensure a reasonably accurate impression is given to users of the IMDb website who do not read my judgment, as no doubt most will not (although there is a somewhat buried reference in the Film’s “Trivia” on IMDb referring to my decision).
9. I therefore intend to make an overall, merits-based assessment of what is fairest and at the same time most reflective of the guidelines and my judgment, recognising that nothing can be a perfect fit. The task is unprecedented as far as I know and I do not purport to create any general principle.
10. First, I reject the Claimants’ suggestion that Ms Kogan’s quantitative contribution, at 20%, was too little to get a “Screenplay by” or “Written by” credit at all. The time to take any such point was at trial, and has passed. In any event, there is no hard limit for percentage contribution in the WGGB guidelines.
11. Second, I think there is force in Ms Kogan’s submission that the WGGB Guidelines are more significant given that this litigation is about UK copyright, but I think it is permissible to refer to both sets.
12. Third, however, it should be noted that the WGGB Guidelines do not entirely favour Ms Kogan since they require a *substantial written* contribution to the screenplay for a “Screenplay by” credit. She did very little writing if any at all, as I held. Further, under the WGGB Guidelines a “Written by” credit requires that the same person undertook both the screenplay and the story.
13. Fourth, I do not read either set of Guidelines as allowing only one person to have a Written by credit. Teams are clearly allowed.
14. In their Counsel’s supplemental email, the position was belatedly taken by the Claimants that Mr Martin himself could not have a Written by credit because he was not the sole creator. As I say, I reject this because teams are clearly

contemplated and in my judgment I found that Mr Martin and Ms Kogan worked as a team. But until the email I had assumed that Mr Martin was happy with his own Written by credit; neither the Claimants’ skeleton for the consequential hearing nor their submissions for this determination, nor any of the correspondence that I am aware of said otherwise, but rather gave the impression that he maintained he was a writer in the relevant sense while Ms Kogan was not. And of course he had had a Written by credit in the Film itself, which IMDb had retained, without objection by him, even after my judgment. The position was also taken in the email that until provision of Ms Kogan’s submissions, Mr Martin’s role and credit were not in play at all. This is to be rejected – Mr Martin’s submissions actively drew a contrast between him and Ms Kogan, and contained the suggestion that she should participate in a credit of “Story by Nicholas Martin, Story by Julia Kogan (originally uncredited)”. Part of the point of this exercise is to arrive at a credit which reflects their respective roles.

15. Fifth, to give Mr Martin a Screenplay by and a Story by credit and Ms Kogan only a Story by credit (which is what the Claimants now argue for in their Counsel’s email) would imply a significant qualitative difference in input which my judgment does not warrant. It would imply that Ms Kogan did not contribute to the Screenplay, when she clearly did. Her input went well beyond just story.
16. Sixth, I reject Ms Kogan’s reliance on IMDb having made an assessment of the right credit. All they did was to replicate the Written by credit that showed with the film for Mr Martin and use the same categorisation for Ms Kogan, plus “uncredited”. They made no assessment so far as I can see of whether she specifically merited “written by”.
17. These factors pull in different directions, but in my view, the current credit is the best option. It reflects what credits the film itself showed, which is the IMDb approach, and the later change (“originally uncredited”) for my judgment. It puts Mr Martin first, which is appropriate given his much greater input. It is not in direct contravention of any strong principle in any of the guidelines. It suffers from two potential problems, each of which I think, however, is of no or low significance:
 - i) Ms Kogan’s quantitative contribution was small. I have rejected this point as too late to prevent her getting a credit, her contribution was real not trivial, and in any event her being put second implies she was a more minor, sub-50% contributor.
 - ii) Ms Kogan did not write many words of the screenplay, so she should, the Claimants say, not get a Screenplay by credit on a narrow reading of the WGGB Guidelines and therefore cannot get a Written by credit. However, the WGA Guidelines clearly go broader than just words. This is the Claimants’ better point but I think it is outweighed by other factors.

Therefore my decision is that the current credit complies with the Film Companies’ obligations under my judgment and ought not to be changed.