

Guzman v. Hacienda Records and Recording Studio: No Appellate “Second Guessing” of Witness Credibility Determinations

Article By:

Blake Wong

Addressing whether nearly identical opening song lyrics showed copying and whether to give more weight to testimony from witnesses who contradicted themselves, the U.S. Court of Appeals for the Fifth Circuit determined that the songs in issue were not copies of each other and the overall lyrical themes and musical arrangements were not unique in the genre of the Tejano music the two pieces fell under. The Fifth Circuit also declined to second-guess the district court’s witness credibility determinations, which it concluded were “virtually unassailable on appeal.” *Guzman v. Hacienda Records and Recording Studio, Inc.*, Case No. 15-40297 (5th Cir., Dec. 14, 2015) (Stewart, C.J.).

Corpus Christi, Texas is a hub for Tejano music, a genre of popular music originating in Northern Mexico and Texas. Jose Guzman of Corpus Christi wrote a song called *Triste Aventurera* (*Triste*). The song’s title references a woman rejected by her ex-lover, who tells the woman that she will forever be a sad adventurer. Guzman wrote *Triste* in the early 1970s. Until approximately 1990, local radio stations played *Triste* regularly, and Guzman’s band regularly performed the song at local music festivals. Then, in the 1990s, Guzman heard a song called *Cartas de Amor* (*Cartas*) on the radio. He concluded that *Cartas* must have been copied from his song, *Triste*, believing the songs shared lyrical themes and musical qualities.

Guzman filed suit alleging copyright infringement. After a three-day bench trial, the district court ruled against Guzman, concluding he had failed to show either that the defendants had “access” to his song, a necessary element of a copyright infringement claim or that *Triste* and *Cartas* were strikingly similar, such that access could be presumed. Guzman appealed.

The 5th Circuit accorded deference to the district court, which had discounted the witnesses’ testimony on whether the musicians behind *Cartas* had access to *Triste*. The witnesses gave unclear and inconsistent testimony on the frequency and time period that *Triste* was played on the radio. Guzman introduced no independent evidence—such as evidence of record sales, awards or royalties—that showed that the local radio stations frequently played *Triste*. The district court also discounted inconsistent testimony regarding how often Guzman’s band performed *Triste* live. The 5th Circuit saw no reason to overturn the district court’s credibility determinations, which it explained were “virtually unassailable on appeal,” as only a trial judge can observe a witness’s demeanor and tone of voice.

The 5th Circuit also rejected Guzman's argument that a showing of "access" was not required because the two songs were strikingly similar. In the absence of proof of access, a plaintiff may establish copying by showing that the two works are strikingly similar, which requires that the similarities are sufficiently unique or complex to preclude an explanation other than copying. Here, the two songs were pop songs, and many pop songs, especially songs in the same genre, express the same attitudes and phrases. That the opening lyrics of *Triste* and *Cartas* were nearly identical did not establish striking similarity. The Court explained that the lyrics, regarding love letters and forgiveness, were not unique in the genre. The two songs' melodies, rhythmic patterns and instrumental accompaniment were also common in Tejano music. The 5th Circuit concluded that the district court was not clearly erroneous in finding no striking similarity.

Finally, the Court declined to adopt a "sliding scale" analysis. Guzman argued that the Court should relax Guzman's burden to show "access" because of the similarity between the songs. The 5th Circuit had never expressly adopted such a "sliding scale" analysis and declined to do so here, especially as there was no indication that the district court would have weighed the evidence differently under a sliding scale analysis.

© 2025 McDermott Will & Emery

National Law Review, Volume VI, Number 30

Source URL: <https://natlawreview.com/article/guzman-v-hacienda-records-and-recording-studio-no-appellate-second-guessing-witness>