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NOTES & COMMENTS

INJUNCTIONS—UNJUST RESTRAINT ON ENTERTAINERS IN CALIFORNIA

I. INTRODUCTION

Hollywood is a town built on dreams. Young actors and musicians hone their skills for years, waiting for that one big break that will make them a star. When an artist¹ gets a chance to sign his first big contract, he often sees it as the pot of gold at the end of the rainbow, rather than as a document that will bind him for many years. Even if he is not blinded by the promise of untold fame and fortune, he often finds himself in an inferior bargaining position. A company can choose from many hopeful young talents while an individual artist may see an offer by one company as his only chance to be signed. He may be afraid to scare the company away with a tough negotiating stance, often accepting a contract with very unfavorable terms,

In the years following, the artist can become more successful and may realize that his contract does not fairly compensate him for his services. Companies are also quite aware of changes in an artist's stature, and will often renegotiate his contract in good faith.² However, the parties can disagree about the artist's worth, causing the renegotiation process to break down. In such cases, many artists simply cease to perform their contractual obligations. Under California law, the artist cannot be forced to perform.³ However, the company may get a

1. In this comment, the term "artist" will be used to refer to all entertainers including actors, both television and film, and recording musicians and singers.

2. Most entertainment cases never reach a trial court, and even fewer reach a court of appeal or the California Supreme Court. See Tusher, *Troubled Tandem Hails Warning to Balky Stars*, HOLLYWOOD REP., June 5, 1975, at 1 (observation by producer Norman Lear that networks usually renegotiate actors' contracts even when demands are unreasonable). *But see* Tandem Prods., Inc. v. Struthers, No. C 126009 (L.A. Super. Ct., filed July 2, 1975), reported in HOLLYWOOD REP., June 9, 1975, at 1 (producer Lear himself unable to renegotiate with actress Sally Struthers).

See also Frackman, *Failure to Pay Wages and Termination of Entertainment Contracts in California*, 52 S. CAL. L. REV. 333, 335 & n.9 (1979) [hereinafter cited as Frackman].

3. The obligation to perform under the terms of a personal service contract cannot be enforced by specific performance in California. The California Supreme Court has stated: [I]t would be an invasion of one's statutory liberty to compel him to work for, or to remain in the personal service of, another. It would place him in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States, or any place subject to their jurisdiction.

court to issue a prohibitory injunction preventing the artist from performing for any of its competitors.⁴

Neither the artist nor the company wants the dispute to reach this point. The artist does not want to be prevented from earning a living, and realizes that time spent out of the spotlight can hurt his earning power.⁵ The employer wants a prompt, amicable settlement because a disgruntled or inactive artist can cut into both company profits and prestige.⁶

This comment focuses on the availability of an injunction to a company after the negotiations break down. In California, no injunction may be issued if a company has "wilfully or materially" breached its obligation,⁷ or if the employee has not been *guaranteed* a minimum of at least \$6,000 compensation per annum.⁸ An injunction is limited

Poultry Producers of S. Cal., Inc. v. Barlow, 189 Cal. 278, 288, 208 P. 93, 97 (1922).

4. The right of an employer to seek a prohibitory injunction against an employee which prevents her from performing for an employer's competitor was first recognized in the landmark case of Lumley v. Wagner, 42 Eng. Rep. 867 (Ch. 1852). In this case, an opera singer refused to perform under her contract to sing exclusively at one opera house. Although specific performance was not granted, the court enjoined her from singing at another opera house.

A court will not issue a preliminary injunction unless it finds that the employer would be more likely than not to win the trial on the merits. Paramount Pictures Corp. v. Holden, 166 F. Supp. 684, 691 (S.D. Cal. 1958). The major purpose of a preliminary injunction is to preserve the status quo pending a final judgment in the action. Environmental Coalition of Orange County, Inc. v. AVCO Community Developers, Inc., 40 Cal. App. 3d 513, 521, 115 Cal. Rptr. 59, 63 (1974); Keith v. Superior Court, 26 Cal. App. 3d 521, 524, 103 Cal. Rptr. 314, 316 (1972).

But see Stevens, *Involuntary Servitude by Injunction* 6 CORNELL L.Q. 235 (1921) (prohibitory injunctions coerce employee to go back to work and force involuntary servitude).

5. See Laurel Canyon, Ltd. v. Springsteen, 55 A.D.2d 882, 391 N.Y.S.2d 364 (1977). An injunction restrained rock star Bruce Springsteen from recording shortly after he appeared as the cover story subject in both *Time* and *Newsweek* the same week, and his last album had sold over 1,000,000 copies. McGee, *Bruce Springsteen Reclaims the Future*, Rolling Stone, August 11, 1977, at 11, col. 1. The injunction was obtained by Springsteen's manager when Springsteen attempted to have Jon Landau produce the next album. Springsteen's manager obtained a preliminary injunction enjoining Springsteen, CBS and Landau from producing a recording. N.Y.L.J., August 25, 1976, at 6, col. 1. As a result, Springsteen was unable to take full advantage of the fame he had achieved.

6. See *Street Legal*, Cashbox, June 10, 1978, at 3, col. 1. It may be that, when a record company and an artist become involved in a long legal battle, only their attorneys profit.

7. CAL. LAB. CODE § 2925 (West 1971):

An employment for a specified term may be terminated by the employee at any time in case of any wilful or permanent breach of the obligations of his employer to him as an employee.

Because the California Labor Code provides that an employee can unilaterally terminate his employment if his employer wilfully or materially breached its contractual obligations, it is clear that no court would issue injunctions in such a situation.

8. Foxx v. Williams, 244 Cal. App. 2d 223, 52 Cal. Rptr. 896 (1966).

to the term of the contract,⁹ and, by statute, in no case longer than seven years.¹⁰

These laws do not necessarily provide an artist adequate protection. The courts have not clearly defined what constitutes a "wilful or permanent" breach by the employer.¹¹ The \$6,000 minimum annual compensation requirement does not provide a living wage in the current inflated economy,¹² and is not *de facto guaranteed* because courts often inaccurately value the guaranteed minimum compensation provided by a contract.¹³ The limitations on the duration of an injunction are probably ineffective, because an artist's career can easily be destroyed during this period.¹⁴

The solutions to these problems are: (1) more comprehensive opinions by the appellate courts, establishing clearer standards of duty for both parties; (2) raising the level of minimum compensation required, by adjusting it periodically to an inflation index and assuring an artist that the new figure will be guaranteed; and (3) shortening the duration an injunction may remain in force against an artist.

II. RESTRICTIONS ON ISSUANCE OF INJUNCTIONS

An injunction is typically sought by the company whenever an artist tries to assert his statutory right to terminate a contract for any wilful or permanent breach or failure to provide \$6,000 minimum compensation. Courts will not issue an injunction unless the party seeking the injunction is more likely than not to win at a trial on the merits.¹⁵ Thus, the right to terminate a contract for breach of obliga-

9. Warner Bros. Pictures v. Brodel, 31 Cal. 2d 766, 773, 192 P.2d 949, 953 (1948); MCA Records, Inc. v. Newton-John, 90 Cal. App. 3d 18, 24, 153 Cal. Rptr. 153, 155 (1979).

10. CAL. LAB. CODE § 2855 (West 1971); see De Haviland v. Warner Bros. Pictures, 67 Cal. App. 2d 225, 153 P.2d 983 (1944).

11. See notes 21-40 and accompanying text *infra*.

12. See notes 71-75 and accompanying text *infra*.

13. See notes 52-66 and accompanying text *infra*.

14. R. DENISOFF, SOLID GOLD: THE POPULAR RECORD INDUSTRY 110 (1975) [hereinafter cited as DENISOFF].

15. See Paramount Pictures Corp. v. Holden, 166 F. Supp. 684, 689-91 (S.D. Cal. 1958). CAL. CIV. PROC. CODE § 525 (West 1970):

An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court.

The United States Supreme Court has written:

There is no power, the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in the doubtful case, than the issuing of an injunction. It is the strong arm of equity, that never ought to be extended, unless to cases of great injury, where courts of law cannot afford an adequate and commensurate remedy in damages. The right must be

tions is interwoven with an employer's use of the injunction remedy.

Injunctions are used by a company to enforce an exclusivity clause or suspension clause of a contract with an artist. These contract provisions are contained in a contract solely for the benefit of an employer.

An exclusivity clause is a negative covenant contained in a personal service contract,¹⁶ which is strictly construed,¹⁷ to provide that an artist will not perform for another employer engaged in the same enterprise during the contract term. A suspension clause permits an employer to halt the operation of a personal service contract in the event

clear, the injury impending, and threatened so as to be averted only by the protective preventive process of injunction.

Truly v. Wanzer, 46 U.S. (5 How.) 141, 142-43 (1847).

The issuance of a preliminary injunction lies within the discretion of the trial court. Weingard v. Atlantic Savings & Loan Assn, 1 Cal. 3d 806, 464 P.2d 106, 83 Cal. Rptr. 650 (1970).

The sole function of an injunction is to preserve the status quo between the parties until the final judgment in an action. Keith v. Superior Court, 26 Cal. App. 3d 521, 103 Cal. Rptr. 314 (1972).

The party seeking the injunction has the duty to prosecute the action in a reasonable period of time. See CAL. CIV. PROC. CODE §§ 581(a), 583 (West 1970).

In the entertainment industry, injunctions are not always necessary to prevent artists from working for someone else. A warning to prospective bidders from an artist's company of a possible lawsuit for tortious interference with contractual relations often has the same effect on the artist as an injunction. See Note, *Statutory Minimum Compensation and the Granting of Injunctive Relief to Enforce Personal Service Contracts in the Entertainment Industries: The Need for Legislative Reform*, 52 S. CAL. L. REV. 489, 492 (1979) [hereinafter cited as *Minimum Compensation*].

However, this is not always the case. When rock artist Tom Petty was in a battle with his record company, several other competitive labels made lucrative offers to him. Some even offered to cover the legal costs that Petty would incur during the prolonged legal battle. Jackson, *Tom Petty's Rock Victory*, BAM, December 14, 1979, at 25, col. 1. See notes 39-40 and accompanying text *infra* for a discussion of the Petty case.

16. In the early English cases, there was some controversy as to whether such a clause was actually required to bind an employee solely to an employer during the term of a contract. It is now established in most U.S. jurisdictions that the promise of an employee not to render services to another employer is *implied* in the personal service contract. See 11 S. WILLISTON ON CONTRACTS, § 1449, at 1039-40 (3d ed. 1968); 2 CAL. JUR. 3d *Actors* § 8, at 17-18.

Nevertheless, most artist's personal service contracts contain lengthy exclusivity clauses. One such clause reads:

From the date hereof and so long as this agreement remains in force, Artist will not perform for the purpose of making phonograph records for any person other than XYZ, and Artist will not authorize or permit use of Artist's name, likeness or identification, voice or sound effects, or performance for in connection with the production, sale, distribution, advertising, publicity or exploitation of phonograph records by or for any person other than XYZ.

17. See *Lemat Corp. v. Barry*, 275 Cal. App. 2d 671, 678, 80 Cal. Rptr. 240, 245 (1969). "[A]ny agreement that limits a person's ability to follow his or her vocation must be strictly construed."

specified conditions occur.¹⁸ This right is a contractual creation. It does not exist at common law and is not granted by statute.¹⁹ During the temporary suspension of the contract, an artist is prevented from working for another employer, and the term of the artist's obligation is extended by an amount equivalent to the length of the suspension.²⁰

Therefore, if an artist asserts statutory protection against a company, he may expect that company to seek to suspend the term of the contract.

18. A typical suspension clause follows:

We [the Company] shall have the right, at our election, to suspend the term of this contract and our obligations hereunder upon written notice to you [the Artist] if for any reason . . . [an exhaustive list of reasons is given]. . . . Such suspension shall be for the duration of any such event or contingency, and, unless we notify you to the contrary in writing, the term hereof (whether the initial term or any renewal term hereof) during which such event or contingency shall have commenced shall be automatically extended by such number of days as equal the total number of days of any such suspension. During any such suspension you shall not render your services as a recording artist to any other person, firm or corporation.

PRACTICING LAW INSTITUTE, LEGAL AND BUSINESS PROBLEMS OF THE RECORD INDUSTRY 127, 141 (1978) (Elektra/Asylum Artist Term Contract).

19. See Youngman, *Negotiation of Personal Service Contracts*, 42 CALIF. L. REV. 2, 11 (1954).

However, the Ninth Circuit Court of Appeals has stated that a clause that suspended a screenwriter without pay, and prevented him from working for another employer was void. *Loew's, Inc. v. Cole*, 185 F.2d 641, (9th Cir. 1950), *cert. denied*, 340 U.S. 954 (1951). The court ruled that such a restriction was an improper restraint of trade under CAL. BUS. & PROF. CODE § 16600 (West 1964) ("Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business is to that extent void"). 185 F.2d at 657.

However, most cases do not address the applicability of section 16600 to personal service contracts, and a commentator stated that *Loew's* should not be interpreted to mean that exclusivity clauses cannot be enforceable during suspension periods. Tannenbaum, *Enforcement of Personal Service Contracts in the Entertainment Industry*, 42 CALIF. L. REV. 18, 24-25 (1954).

The *Loew's* case is distinguishable because it involved the enforcement of a "morality clause" which is conceptually different from an exclusivity clause. The clause in the *Loew's* case stated that the artist could be suspended if he "commit[ted] any act that will tend to degrade him in society or bring into public hatred, contempt, scorn or ridicule. . . ." 185 F.2d at 645. A morality clause is different from an exclusivity clause because when an employer invokes a morality clause the artist is completely willing to perform for his employer but is prevented from doing so. When an employer invokes an exclusivity clause, an artist is trying to perform for another employer. See Horowitz, *Legal Aspects of "Political Black Listing" in the Entertainment Industry*, 29 S. CAL. L. REV. 263 (1956).

20. A suspension clause cannot extend an artist's obligation beyond seven years from the date of signing of the original agreement. *De Haviland v. Warner Bros. Pictures*, 67 Cal. App. 2d 225, 153 P.2d 983 (1944) (construing CAL. LAB. CODE § 2855 (West 1971) (seven year limitation on personal service obligation)).

The suspension is limited to the term of the contract if it is for a term of less than seven years. *MCA Records, Inc. v. Newton-John*, 90 Cal. App. 3d 18, 153 Cal. Rptr. 153 (1979).

A. Section 2925 of the Labor Code

Traditionally, the right to terminate a contract was restricted to contracts where the other party's breach was "material."²¹ However, section 2925 of the California Labor Code additionally provides that an employee may terminate his service to an employer "at any time" there is a "wilful and permanent" breach of the employer's contractual obligations.²² Section 2925 was enacted long after the concept of materiality became entrenched in the common law,²³ so it is doubtful that the legislature meant merely to codify the common law requirement. For example, at common law, after substantial performance, a slight breach that did not go to the root of a contract would not justify termination.²⁴ However, the language of section 2925 seems to justify termination of the contract at any time so long as the breach is wilful and permanent.²⁵ The statute appears to be a refinement of the common law rule.

One recent commentator argued that by enacting section 2925, the legislature chose to give the employee *unique* rights, apart from the common law materiality requirement. Since the employment relationship is of public concern, the legislature enacted section 2925 to give employees measurably greater protection.²⁶ The Labor Code includes many other specific statutes that are carefully designed to protect the

21. See 11 S. WILLISTON, WILLISTON ON CONTRACTS § 1292, at 8-11 (3d ed. 1968).

The facts used to determine whether a breach is "material" include: the timing of the breach in relation to the duration of the contract (the earlier the breach, the more likely it will be material), the importance of the breach in relation to the object of the contract, the extent to which the party failing to perform has already performed, and whether the remedy of money damages would be adequate to compensate the party. 1 B. WITKIN, SUMMARY OF CALIFORNIA LAW *Contracts* § 620, at 528-29 (8th ed. 1973).

22. CAL. LAB. CODE § 2925 (West 1971) *supra* note 7. Generally, when the concept of "wilful breach" is relied upon, the breach must not only be wilful but also "material in character and extent." 6 A. CORBIN, CORBIN ON CONTRACTS § 1254, at 17 (1962).

However, section 2925 states that an employee may terminate a contract "any time" there is "a wilful or permanent" breach. There is no requirement of "materiality."

23. See 1 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* § 620, at 528-29 (8th ed. 1973) (traces history of materiality doctrine).

24. *E.g.* *Rischar v. Miller*, 182 Cal. 351, 188 P. 50 (1920).

25. Generally, "any wilful or permanent breach" will be deemed by a court to be "material." Therefore, even though they may be conceptually different, their practical applications are probably the same. See *generally* Frackman, *supra* note 2, at 348-49.

26. See *id.* at 349 n.69. "[T]he rule of law is well established that where the legislature uses terms already judicially construed, 'the presumption is almost irresistible that it used them in the precise and technical sense which had been placed upon them by the courts.'" *City of Long Beach v. Marshall*, 11 Cal. 2d 609, 620, 82 P.2d 362, 367 (1938) (quoting *City of Long Beach v. Payne*, 3 Cal. 2d 184, 191, 44 P.2d 305, 309 (1935)).

wage earner.²⁷ It is reasonable then to conclude that section 2925 was also intended to give the employee protection not found at common law.

The issue of whether an employer may invoke an injunction against an employee seeking to terminate a contract under section 2925 has never been litigated. The only entertainment law case involving section 2925 rights unfortunately did not address the issue of the availability of an injunction to an employer.²⁸ In *Bumgarner*, the plaintiff, actor James Garner, contracted with Warner Bros. in 1955 to appear in a weekly television series, "Maverick."²⁹ The contract contained a standard *force majeure* clause.³⁰ The *force majeure* clause in the Garner contract stated that Garner could be suspended without pay if "preparation, production, or completion of motion pictures" was hampered by certain factors, including strikes.³¹ A strike was called by the Writers Guild of America West, and Warner Bros. notified Garner that his pay would be suspended until the strike was settled, because no scripts were available.³² Garner objected to the suspension, demanded his salary, and declared the contract terminated when Warner Bros. refused to pay.³³ Rather than seeking an injunction against Garner, Warner Bros. filed an action for declaratory relief claiming that the contract was not breached.³⁴

The trial court found, and the appellate court affirmed, that a *force majeure* did not exist, and therefore Warner Bros. had wilfully and

27. See CAL. LAB. CODE §§ 204b, 206, 209, 226, 227.5 (West 1971 & Cum. Supp. 1979). These sections provide for payment of undisputed amounts in the event a dispute exists with respect to other portions of the wage, payment for previously earned wages in the event of a strike, an itemized statement to accompany payment and, in certain instances, the weekly payment of wages.

28. *Warner Bros. Pictures, Inc. v. Bumgarner*, 197 Cal. App. 2d 331, 17 Cal. Rptr. 171 (1961).

29. *Id.* at 334, 17 Cal. Rptr. at 172.

30. *Id.* at 334 n.2, 17 Cal. Rptr. 173 n.2. The term "force majeure" means literally superior or irresistible force. It is an "insuperable interference occurring without the party's intervention [that] . . . could not have been prevented by the exercise of prudence, diligence, and care." *Pacific Vegetable Oil Corp. v. C.S.T., Ltd.*, 29 Cal. 2d 228, 238, 174 P.2d 441, 447 (1946).

Force majeure clauses have been inserted into entertainment contracts for many years. *E.g.* *Autry v. Republic Prods., Inc.*, 30 Cal. 2d 144, 149-50, 180 P.2d 888, 892 (1947).

31. 197 Cal. App. 2d at 334 n.2, 17 Cal. Rptr. at 173 n.2.

32. *Id.* at 335, 17 Cal. Rptr. at 174.

33. *Id.*

34. *Id.* at 336, 17 Cal. Rptr. at 174. Warner Bros. claimed that Garner's suspension was justified because of the force majeure clause, and that even if reliance on the force majeure clause was unjustified, it was done in good faith.

permanently breached its obligation to pay Garner.³⁵

The California Supreme Court did not have to address the important issue of whether an employer would be permitted to obtain an injunction against an artist to enforce an exclusivity clause during a suspension period, since Garner did not seek other employment during the litigation.

The Ninth Circuit Court of Appeals held that a contract that prohibits an artist from working for another employer during a suspension period is an unlawful restraint of trade.³⁶ The New York Court of Appeals (interpreting California law) has also held that such a restraint is void.³⁷ Commentators have argued that these cases do not render exclusivity clauses invalid during all suspension periods.³⁸ However, until a California court rules on this issue, artists must be careful when signing contracts. A clause containing the express provision that an artist may perform for another employer during such a suspension period will provide artists with adequate protection. In the absence of such a clause, an artist is subject to periods of inactivity through either an exclusivity clause or an injunction.

1. Improper assignment

The California courts have not yet ruled on whether an improper assignment of an artist's contract by an employer is a willful and permanent breach under section 2925. Generally, rights may not be assigned which would require the obligor to perform personal services for anyone other than the original obligee.³⁹ The custom in the entertainment industry is that such a right does not exist without a specific clause granting that privilege. This issue has never been litigated because the parties usually settle their disputes out of court.

A recent example involved musician Tom Petty. Petty's record label (ABC) was purchased by MCA. Petty argued that his contract was not assignable because there was no clause in his contract permitting

35. *Id.* at 350-53, 17 Cal. Rptr. at 183-85. The finding that a force majeure did not exist was based on the finding that Warner Bros. continued to produce other films during Garner's suspension. *Id.* at 342, 17 Cal. Rptr. at 178. The finding of bad faith was based on the fact that, while Warner Bros. was planning to suspend Garner, but before it had told him, it requested him to make a guest appearance on another show. *Id.* at 348, 17 Cal. Rptr. at 182.

36. *Loew's, Inc. v. Cole*, 185 F.2d 641 (9th Cir. 1950), *cert. denied*, 340 U.S. 954 (1951). See note 18 *supra*.

37. *Radosh v. Shipstad*, 20 N.Y.2d 504, 231 N.E.2d 759, 285 N.Y.S.2d 60 (1967).

38. See, e.g. Berman & Rosenthal, *Enforcement of Personal Service Contracts in the Entertainment Industry: Part I: Specific Enforcement*, J. BEVERLY HILLS B.A., Sept. 1973, at 49, 58.

39. See *Davis v. Basalt Rock Co.*, 107 Cal. App. 2d 436, 237 P.2d 338 (1951).

the assignment. MCA argued that the contract was assignable, and that it had purchased ABC specifically to obtain the Petty, Jimmy Buffett, and the Steely Dan record catalogues.⁴⁰ Since the matter was settled out of court, artists and employers are still uncertain whether improper assignment allows invocation of section 2925.

B. Section 3423 of the Civil Code⁴¹ & Section 526 of the Civil Procedure Code⁴²

California Civil Procedure Code section 526 and Civil Code section 3423 together prohibit the issuance of a prohibitory injunction if the employee is not guaranteed in writing a minimum of \$6,000 per year compensation.⁴³ Although the statutes were enacted in 1919, no appellate court interpreted the statute for another 47 years.⁴⁴ What has emerged in the cases since then is: (1) that \$6,000 *guaranteed* compensation per year *is not* guaranteed; and (2) even if \$6,000 were guaranteed, it would not be an adequate minimum compensation.

The issue of \$6,000 minimum annual compensation has not arisen often in the motion picture or television industries.⁴⁵ Most of these

40. Jackson, *Tom Petty's Rock Victory*, BAM, December 14, 1979, at 25, col. 1.

Petty balked at the assignment because he did not wish to remain under the terms of the old ABC deal under which he would receive no songwriting royalties prior to the release of his fourth album. Furthermore, he claimed that the contract had been breached because it contained a clause which gave Petty the right to "consult and cooperate in the process of selecting another record company to distribute [Petty's] recordings" in the event ABC could no longer do so. See Gilmore, *Tom Petty's Real Life Nightmares*, Rolling Stone, February 21, 1980, at 12, col. 1.

41. CAL. CIV. CODE § 3423(5) (West 1970):

An injunction cannot be granted to prevent the breach of a contract, other than a contract in writing for the rendition or furnishing of personal services from one to another where the minimum compensation for such service is at the rate of not less than six thousand dollars per annum and where the service is of a special, unique, unusual, extraordinary or intellectual character, which gives it peculiar value the loss of which cannot be reasonably or adequately compensated in damages in an action at law. . . .

42. CAL. CIV. PROC. CODE § 526(5) (West 1970) (contains virtually the same provisions as section 3423 of the Civil Procedure Code).

43. The services provided must be of a "special, unique, unusual, extraordinary or intellectual character." *Fox v. Williams*, 244 Cal. App. 2d 223, 235-36, 52 Cal. Rptr. 896, 904 (1966). Compliance with the Statute of Frauds for personal service contracts for more than one year is also required. *Columbia Pictures Corp. v. DeToth*, 87 Cal. App. 2d 620, 197 P.2d 580 (1948).

The requirement that the services be unique reflects the common law rules. See J. CALAMARI & J. PERILLO, *THE LAW OF CONTRACTS* § 16-5, at 585-86 (2d ed. 1977). If the services are not unique, then a remedy at law for damages is appropriate. See 5A A. CORBIN ON CONTRACTS § 1209, at 416-17 (1964).

44. *Fox v. Williams*, 244 Cal. App. 2d 223, 52 Cal. Rptr. 896 (1966).

45. An actor signed an exclusive contract with one studio. The studio nurtured the ac-

cases have involved artists in the recording industry, which has grown geometrically in recent years.⁴⁶

As noted, *Foxx v. Williams*⁴⁷ was the first appellate court interpretation of the minimum compensation requirement. The trial court issued an injunction preventing comedian Redd Foxx from recording for any other record company for the duration of the contract between Foxx and Dootone Records, provided that the royalties earned by Foxx equaled or exceeded \$3,000 during each six-month period.⁴⁸ Foxx refused to record for Dootone from the day he filed his action. However, Foxx had previously recorded and delivered enough masters to Dootone to satisfy the minimum number of sides required by his contract.⁴⁹ In reviewing that recording contract, the court reasoned that the royalty payments due Foxx were entirely contingent upon sales, and therefore he was not *guaranteed* the annual payment of \$6,000.

tor, telling him which pictures he would appear in. At the studio's sole discretion, it could "loan-out" the actor in return for favors or another actor. Obviously, issues of involuntary servitude were involved under this system, but rarely did the \$6,000 minimum compensation requirement become a contested issue. See *Universal Pictures Co. v. Cummings*, 62 F. Supp. 611 (S.D. Cal. 1944), *aff'd*, 150 F.2d 986 (9th Cir. 1945).

The star system broke down in the early 1950's when the government initiated anti-trust proceedings against the studios forcing them to divest ownership in theatres. Since they no longer needed product to fill their own theatres, they stopped entering long-term exclusive contracts. For example, before the divestment, Clark Gable might be signed to a \$500,000 contract and make five or six films each year. After the divestment, he would only make about two or three films each year, so the studios negotiated individual picture deals. A. KNIGHT, *THE LIVELIEST ART* 289-94 (rev. ed. 1979).

The minimum compensation issue rarely arises in episodic television because a series runs 26 episodes per year. With Screen Actors Guild requirements for minimum compensation, it is virtually impossible for this issue to arise.

See Comment, *Messersmith Decision and the 1976 Basic Agreements: Baseball's Emancipation Proclamation*, 46 U. MO. K.C. L. REV. 239 (1977), for a discussion of the baseball contract system which was similar to the old movie "star system," and the effect of free agency upon it.

46. In 1974, United States revenues of the recording industry exceeded \$2 billion while the movie industry garnered only \$1.6 billion. S. CHAPPLE & R. GAROFALO, *ROCK 'N' ROLL IS HERE TO PAY* xi (1977) [hereinafter cited as CHAPPLE & GAROFALO].

In 1977 U.S. record sales rose to an all time high of \$3.5 billion. Kireby, *RIAA Reports \$3.5 Billion Industry Sales: 1977 Figures are 28% Increase Over '76*, *Variety*, July 7, 1978, at 1, col. 4.

47. 244 Cal. App. 2d 223, 52 Cal. Rptr. 896 (1966). The dispute in *Foxx* arose when Redd Foxx maintained that he was not being paid the royalties due him under the terms of the contract. The court of appeal found this suspicion to be unwarranted. *Id.* at 231-35, 52 Cal. Rptr. at 901-03.

48. *Id.* at 230, 52 Cal. Rptr. at 900-01.

49. The contract stated that Foxx was required to deliver a minimum of twelve 78-RPM record sides. He had satisfied this requirement because he had already delivered sixteen long playing records, twenty-six extended play records, and five singles. *Id.* at 229, 52 Cal. Rptr. at 899.

Deciding in Foxx's favor, the court interpreted the legislative intent of the statutes:

An injunction which forbids an artist to accept new employment may be a *harsh and powerful remedy*. The monetary limitation in the statute is intended to serve as a counterweight in balancing the equities. The Legislature has concluded that an artist who is not entitled to receive a minimum of \$6,000 per year by performing his contract should not be subjected to this kind of economic coercion. Under the statutory scheme, an artist who is enjoined from accepting new employment will at least have the alternative of earning \$6,000 or more per year by performing his old contract.⁵⁰

Although a commentator suggested that *Foxx* left many questions unanswered,⁵¹ thirteen years passed before the appellate court had occasion to readdress this area.

In *MCA Records, Inc. v. Newton-John*,⁵² Olivia Newton-John had a recording contract with MCA to record two albums per year for two years, plus MCA had the option to receive two more albums for each of three additional option periods. Newton-John delivered the first three recordings on schedule, but the fourth recording was delivered late. MCA exercised its first option, but did not receive another recording from Newton-John. The contract stipulated that if Newton-John failed to deliver a recording, MCA was entitled to extend the contract.⁵³ In return, Newton-John was to receive royalties from the sale of records, and a nonreturnable advance of \$250,000 for each recording received during the initial two year period, and \$100,000 for each recording made during the option years.⁵⁴ Under the terms of the contract, Newton-John received approximately \$2,500,000 in royalties from

50. *Id.* at 236, 52 Cal. Rptr. at 904 (emphasis added).

51. Schlesinger, *Six Thousand Dollars Per Year*, J. BEVERLY HILLS B.A., Dec. 1968 at 25, 26.

52. 90 Cal. App. 3d 18, 153 Cal. Rptr. 153 (1979).

53. *Id.* at 21, 153 Cal. Rptr. at 154.

54. *Id.*

The payment of advances to artists reflects the changing business practices of the record companies. In the past, record companies would give artists an advance as the salary. The recording costs as well as the advance were deducted from the royalties that the artists earned from the sale of their records.

However, the record companies found that the artists often spent the money and did not produce any recordings so the advance payment to the artist was tied to the delivery of the master recording. The record company still deducted the cost of the recording and the advance payment from the royalties the artists earned from the sale of albums.

The current record company practice, which was also the procedure by which Olivia Newton-John was paid, is to pay the artist an advance out of which the recording costs are

MCA.⁵⁵

Both parties filed breach of contract actions against the other and sought injunctive relief. MCA obtained a preliminary injunction to prevent Newton-John from working outside MCA, and Newton-John appealed.⁵⁶ Newton-John alleged that the preliminary injunction was improper because: (1) her contract failed to guarantee payment of a minimum of \$6,000 per year compensation; and (2) since she was already suspended she could not be restrained from engaging in her occupation.⁵⁷

The court of appeal upheld the findings of the trial court and concluded: (1) the minimum compensation guaranteed by the statutes does not mean "net profits"; and (2) even if it did, suitable recordings could be made which would guarantee Newton-John \$6,000 minimum compensation.⁵⁸ The court stated:

It is decisive here that under the terms of the agreement exclusive control of production costs remained in defendant's hands at all times. Defendant was free to record in as tight-fisted or as open-handed a manner, costwise, as she chose. Defendant's interpretation of the minimum compensation statutes would allow her to nullify her contract at any time merely by increasing her production expenses, which at all times remained under her exclusive control. We do not believe the legislature intended to sanction such a one-sided bargain. . . .⁵⁹

The court distinguished the case from *Foxx* because *Foxx's* sole compensation was in the form of royalties contingent upon sales, while Newton-John received royalties and nonreturnable advances.⁶⁰

Newton-John received a \$200,000 album fund to produce two records, out of which \$6,000 was treated by the court as minimum compensation. The court made a factual determination that the remaining \$194,000 (\$97,000 for each record) was sufficient to produce "suitable recordings."⁶¹ The court failed to establish a clearcut standard, i.e., whether "suitable recordings" means adequate recordings, or highly

paid. The thinking of the record companies is that if the artists themselves use the advance money to pay for recording costs, they will be more likely to hold such costs down.

55. 90 Cal. App. 3d at 21, 153 Cal. Rptr. at 154.

56. *Id.*

57. *Id.* at 22, 153 Cal. Rptr. at 154.

58. *Id.*

59. *Id.*

60. *Id.* at 22-23, 153 Cal. Rptr. at 155.

61. *Id.* at 22, 153 Cal. Rptr. at 154.

professional recordings that match an artist's stature.⁶²

The *Newton-John* decision establishes a dangerous precedent for artists not as fortunate as Olivia. Suppose an artist receives \$30,000 to produce a recording plus future royalties against sales. Assume further that either the reasonable recording costs exceed \$30,000, or a *force majeure* occurs such as a strike by the distribution company or a fire which destroys the master recording after an artist has delivered it.⁶³ Under the California law as it stands after *Newton-John*, the artist might not receive any money at all for a given year, or actually lose money. But as the court ruled in *Foxx*, the proper issue is whether compensation to an artist is explicitly and unambiguously guaranteed, *not* whether the artist *actually receives* \$6,000 compensation.⁶⁴

Some record companies now include a clause in the contract which states explicitly that an artist is guaranteed \$6,000 minimum compensation per year.⁶⁵ These clauses often contain provisions which allow the record company to modify the agreement at its election to guarantee such minimum compensation.⁶⁶ The effectiveness of such a modifica-

62. See Wallace, *Warner Bros. May Issue Fewer Albums*, Rolling Stone, Mar. 8, 1979, at 10, col. 3 [hereinafter cited as Wallace]. The average cost of producing an album is between \$100,000 and \$150,000.

Suppose that an artist signs a long term contract for what at the time was a "reasonable" advance. Inflation caused by higher minimum payments required by musician unions and more lavish and advanced recording technology required to produce a competitive product raise the cost to produce a "reasonable" recording above what the artist actually receives. Is the artist deemed to have received \$6,000 minimum compensation, even though he may be paying for the recording costs out of his own pocket? This problem has not been addressed by the court. A court might find the "guarantee" illusory and refuse to allow the "harsh and powerful remedy" of an injunction. *Foxx v. Williams*, 244 Cal. App. 2d at 236, 52 Cal. Rptr. at 904.

63. See note 30 *supra*.

64. 244 Cal. App. 2d at 236, 52 Cal. Rptr. at 904.

65. One such clause reads:

Company hereby guarantees Artist compensation for Artist's exclusive recording services at the rate of at least Six Thousand Dollars (\$6,000) per annum; and to the extent monies are payable to Artist in advance, Company may withhold a reserve therefrom for such payments to Artist.

THE BARRISTERS OF THE BEVERLY HILLS BAR ASSOCIATION, COMMITTEE FOR THE ARTS, THE MUSICIAN'S MANUAL 164, 178 (M. Halloran ed. 1979) (Warner Bros. Artist Term Contract) [hereinafter cited as MUSICIAN'S MANUAL].

See *Minimum Compensation*, *supra* note 16, at 512. Inserting a separate contractual term providing for payment of \$6,000 per year satisfies the minimum compensation requirement. However, *Newton-John's* contract did not contain such a clause.

Even if such a clause were added to an artist's contract, a court should consider whether suitable masters could be made for the advance minus the \$6,000 the contract stated was for an artist's minimum compensation. The standard should be whether the albums could be "reasonably" produced for the advance received.

66. One such clause reads:

If California law is hereafter amended to provide for a different minimum com-

tion provision has not been tested by the courts.

The effect of the *Newton-John* decision upon the recording industry has been tremendous. Although record companies on the whole tend to be highly profitable businesses, seventy percent of all recordings released lose money.⁶⁷ A common record company strategy is to release records by many artists in the hope that a few "monster" successes will generate the enormous income necessary to cover the bulk of losers and provide adequate net profits.⁶⁸ Given the small statistical probability for financial success of any individual release, record companies have the problem of providing minimum compensation to every artist on their rosters. Arguably, if a musical group has six members, the record company might have to pay \$36,000 minimum compensation.⁶⁹ Since the costs of promoting an artist are high,⁷⁰ record companies will view the *Newton-John* decision as protection against a successful artist who attempts to breach a contract.

1. \$6000 not adequate minimum compensation

Even if the formal requirements of California Civil Procedure Code section 526 and California Civil Code section 3423 are met, the \$6,000 requirement is too low. The statutes were enacted in 1919 when the average annual income in the United States was \$1,142.⁷¹ Based on consumer-index comparisons, \$6,000 in 1919 would have about the

pensation requirement than Six Thousand Dollars (\$6,000) per annum as a requisite for injunctive relief, the aforesaid references to Six Thousand Dollars (\$6,000) shall automatically be deemed amended to such new figure as of the effective date of such law.

MUSICIAN'S MANUAL, *supra* note 65, at 178.

67. CHAPPLE & GAROFALO, *supra* note 46, at 182.

Although there are no exact figures, an album must sell approximately 20,000 copies to break even (this figure does not take into account the additional promotional costs necessary to retail the album). DENISOFF, *supra* note 15, at 203.

Even successful artists do not start making money for the company until approximately the fourth album. CHAPPLE & GAROFALO, *supra* note 46, at 174.

A company can easily run up an \$800,000 debt supporting a new artist and his coterie. Wallace, *supra* note 62, at 10, col. 3.

68. Approximately 4,000 albums and 7,000 singles are released each year. As many as eighty percent of them fail to make a profit. CHAPPLE & GAROFALO, *supra* note 46, at 182.

However, the point at which a record company reaches a profit can be disputed. Costs subtracted from gross receipts include artist advances, manufacturing costs, advertising and promotional costs, and artist royalties.

69. The issue of whether the statutes require minimum compensation for each and every member of a group has never been litigated at the appellate level. However, a court is as likely to preserve the rights of each member of a group as of an individual artist.

70. The cost of producing, promoting, and supporting a new album is between \$350,000 and \$500,000. See Wallace, *supra* note 62, at 10, col. 3.

71. THE STATISTICAL HISTORY OF THE UNITED STATES 164 (1976) (Average Annual

same value as \$21,000 in 1979.⁷² Passing time has diluted the protection afforded an artist because he can be subjected to the powerful remedy of a prohibitory injunction with compensation worth five times less than when the statutes were enacted.

One obvious solution is to increase the amount of minimum compensation to \$21,000 and tie future increases of this figure to a consumer price index. This creates a new problem,⁷³ however, given the highly speculative nature of the entertainment industry.⁷⁴ Record companies might be reluctant to sign new artists if they were forced to guarantee each artist the minimum compensation of \$21,000 per year.⁷⁵

Another important issue is whether a company *needs* the option of a prohibitory injunction against an artist to operate successfully. Companies would still be able to sue an artist for breach of contract, or sue the other company for unfair competition or interference with contractual obligations. In the latter litigation, the battleground would be shifted from, hypothetically, *Artist v. Old Company* to *Old Company v. New Company*. Thus, if a new company wants to engage an artist already under contract, the artist can record for the new company without the threat of injunction. The two record companies would then litigate among themselves to determine which one was entitled to the artist's services. Furthermore, record companies can retain their most successful artists by providing them \$21,000 guaranteed compensation per year.

Earnings of Employees: 1900 to 1970 Table) [hereinafter cited as AVERAGE EARNINGS TABLE].

72. CALIFORNIA STATISTICAL ABSTRACT 47 (1978) (Consumer Price Indexes Table D-10); AVERAGE EARNINGS TABLE, *supra* note 71, at 211 (Consumer Price Indexes).

73. A group of economic theorists believe that minimum compensation requirements are against the best interests of low wage workers. They argue that employers will not hire employees if it costs them a wage higher than they would normally pay. See J. HIRSHLEIFER, PRICE THEORY AND APPLICATIONS 372-76 (1976).

Applied to the record industry, these economists would argue that record companies would be far less likely to hire new artists, thus depriving them of the chance to be signed at a low wage and work their way up.

74. See note 68 *supra*.

75. Civil Code § 3423 and Civil Procedure Code § 526 do not state that each artist must be paid \$6,000 minimum compensation annually. Rather, they state that an employer may not seek an injunction against an employee who is not so compensated. Therefore, companies could still sign artists for less than the proposed \$21,000 per year. See *Minimum Compensation*, *supra* note 16, at 520-28 for a detailed discussion of the problem involving the minimum compensation requirement.

III. RESTRICTIONS ON DURATION OF INJUNCTIONS

A. Section 2855 of the Labor Code⁷⁶

Among the detailed set of rights and duties contained in the Labor Code is section 2855, which states that personal service contracts cannot extend for a term longer than seven years.⁷⁷ Few artists in the motion picture, television, and recording industries will sign seven year contracts.⁷⁸

Three issues have been decided by the courts regarding section 2855: (1) the protections of its provisions cannot be waived by an artist;⁷⁹ (2) an injunction against an artist may not extend beyond seven years from the date of signing of the original agreement even if there has been a valid suspension;⁸⁰ and (3) if a contract binds an artist for less than seven years, an injunction may not be issued beyond that period even if there has been a valid suspension.⁸¹ However, the courts have not determined the effect subsequent modifications of a contract have upon the seven year limitation.⁸²

In *De Haviland v. Warner Bros. Pictures*,⁸³ the first two issues were resolved. Actress Olivia De Havilland contracted with Warner Bros. for a one-year term, with a series of six successive one-year options, exercisable at the discretion of Warner Bros. The contract gave Warner Bros. the right to suspend the contract if De Havilland failed, refused or neglected to perform to her full ability.⁸⁴ During the suspen-

76. CAL. LAB. CODE § 2855 (West 1974):

A contract to render personal service, other than a contract of apprenticeship as provided in Chapter 4 of this division, may not be enforced beyond seven years from the commencement of service under it. Any contract, otherwise valid, to perform or render service of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value and the loss of which can not be reasonably or adequately compensated in damages in an action at law, may nevertheless be enforced against a person contracting to render such service, for a term not to exceed seven years from the commencement of service under it. If the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

77. *Id.*

78. Neither the artist nor the company desires such a long-term contract because of an artist's fluctuating value over time.

79. *See De Haviland v. Warner Bros. Pictures*, 67 Cal. App. 2d 225, 153 P.2d 983 (1944).

80. *Id.*

81. *See MCA Records, Inc. v. Newton-John*, 90 Cal. App. 3d 18, 153 Cal. Rptr. 153 (1979).

82. *See notes 90-91 and accompanying text infra.*

83. 67 Cal. App. 2d 225, 153 P.2d 983 (1944). For an unknown reason, the official reporter misspelled the actress' name which is in fact spelled "De Havilland." *See 1 WHO'S WHO IN AMERICA* 772 (39th ed. 1967-77).

84. The validity of the suspension was not in issue. *See note 19 and accompanying text supra.*

sion periods De Havilland was to receive no compensation. Illness and De Havilland's refusal to play roles she believed were unsuited for her caused her contract to be suspended for a total of approximately six months. Warner Bros. did not question her good faith, it merely wanted to enforce the contract beyond seven years from the date her services commenced, for a period equivalent to the total of the suspensions.⁸⁵

The court of appeal rejected Warner Bros.' claim that De Havilland could be bound beyond the seven-year period.⁸⁶ In addition, the court rejected Warner Bros.' argument that De Havilland had waived the rights provided by section 2855 when she agreed to the inclusion of a suspension clause:

As one grows more experienced and skillful there should be reasonable opportunity to move upward and employ his abilities to the best advantage and for the highest obtainable compensation. Legislation which is enacted with the object of promoting the welfare of large classes of workers whose personal services constitute their means of livelihood and which is calculated to confer direct or indirect benefits upon the people as a whole must be presumed to have been enacted for a public reason and as an expression of public policy in the field to which the legislation relates. . . .

. . . It could scarcely have been the intention of the Legislature to protect employees from the consequences of their improvident contracts and still leave them free to throw away the benefits conferred upon them.⁸⁷

The court specifically held that De Havilland could not waive her section 2855 rights even if she wanted to, refusing to allow her employment obligation to extend beyond seven years from the original date of signing.⁸⁸

However, *De Havilland* did not resolve all issues with respect to section 2855. In the entertainment industry, artists frequently seek to renegotiate terms of personal service contracts to reflect increased stat-

85. 67 Cal. App. 2d at 229, 153 P.2d at 985.

86. *Id.* at 232, 153 P.2d at 986.

87. *Id.* at 235, 237, 153 P.2d at 988, 989.

88. The court cited section 3513 of the California Civil Code when it rejected Warner Bros. contention of waiver of section 2855: "Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." CAL. CIV. CODE § 3513 (West 1970).

The Labor Code expressly provides that any contract or agreement, express or implied, made by an employee for the purpose of waiving the benefits of article 2, chapter 2, division

ure achieved during the course of the contract.⁸⁹ During these negotiations, the employer will generally seek to extend the term for which the performer is obligated under the terms of the contract in return for the modification that the artist desires. Such a *quid pro quo* raises the issue of whether the renegotiation constitutes a novation, starting a new seven year time period, or whether it is merely a modification of the original agreement.

A recent arbitration decision involving NBC talk show host Johnny Carson illustrates the problem but does not resolve it. In April, 1972, Carson signed a seven-year agreement with NBC to host "The Tonight Show." Subsequently, the parties reached three further agreements providing more money and reduced hours for Carson as host of the show. Carson claimed that his contract expired in April of 1979, seven years after the signing of the original agreement. NBC contended that Carson should be bound until April of 1981 because the new agreements constituted new contracts between the parties.⁹⁰

Because the parties chose to arbitrate this matter rather than to litigate,⁹¹ the Carson-NBC dispute did not become a vehicle for an appellate court to establish a needed precedent in this area.⁹² It is un-

3 of the Labor Code.(obligation of the employer) is null and void. CAL. LAB. CODE § 2804 (West 1971).

No parallel "non-waiver" provision is in article 4 (termination of employment), the article of which section 2925 is a part. See notes 21-28 and accompanying text *supra*.

However, the court has recognized that the payment of wages is how people survive, and therefore is a matter of public concern. See, e.g., *Kerr's Catering Serv. v. Department of Indus. Relations*, 57 Cal. 2d 319, 369 P.2d 20, 19 Cal. Rptr. 492 (1962); *In re Ballestra*, 173 Cal. 657, 161 P. 120 (1916).

The rationale has become part of the California Constitution: "The legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive and judicial powers." CAL. CONST. art. 14 § 1 (West Cum. Supp. 1979).

89. See note 2 *supra*.

Studios and record companies want to avoid losing their stars, and if an artist refuses to perform his contract, the only available remedy is an injunction. This remedy does the studio little real good because all the money and resources invested in creating and publicizing a show is wasted. This was the quandary of Warner Bros. in the *Bumgarner* case, involving the *Maverick* program. See notes 29-35 and accompanying text *supra*.

90. See *Family Feud: Carson and NBC Go to Court*, TIME, Sept. 24, 1979, at 86.

91. See *Minimum Compensation*, *supra* note 16, at 503.

See Comment, *Compulsory Judicial Arbitration in California: Reducing the Delay and Expense of Resolving Uncomplicated Civil Disputes*, 29 HASTINGS L.J. 475, 481-83 (1978). The results of an arbitration process are appealable within a limited period following the arbitrator's decision, so theoretically the case could reach an appeals court.

Arbitration has become an increasingly popular method to settle disputes in the entertainment arena because arbitration produces speedier resolutions. *Id.* at 478.

92. See text accompanying notes 44 and 51 *supra*.

likely a court will get a chance to hear a case of this nature because immediate settlements such as Carson's are commonplace. Pre-trial delays and prolonged court battles often render the duration limitation issue moot, since the contract would have expired by any yardstick. Perhaps the best safeguard to avoid this problem is to provide expressly in the new contract that the former contract is terminated, and that the new contract was entered into for new and different consideration. Nevertheless, it would be helpful if an appellate court would specifically address this issue to resolve the current ambiguities.

1. Injunction may only be enforced for the duration of the contract

In the entertainment industry, artists often sign contracts with a short initial term followed by a series of options. A standard recording contract is often for a term of one-year followed by a succession of six one-year options. Disputes between the artist and the employer can arise at any time during this period. The employer has the right to seek a prohibitory injunction if it contends that the artist has breached the contract. If the breach occurs during, say, the second of six options in a contract, the issue arises whether the injunction may extend only through the current option period or during all the remaining options of the contract. The courts have consistently ruled that an employer *may* obtain an injunction against an artist for the duration of the unexpired term of the contract, including all unexercised option periods.

In *Warner Bros. Pictures v. Brodel*,⁹³ Brodel rendered services during her one-year contract period, and during the first three years of the six one-year option periods. At this point, Brodel reached the age of majority and attempted to disaffirm the contract. Warner Bros. sought an injunction to prevent the actress from performing for others. The trial court sustained the defendant's demurrer and dismissed the action,⁹⁴ but the California Supreme Court reversed.⁹⁵ Justice Traynor, writing for the majority, reasoned that the rule of equity permitting an employer to enjoin an artist during a contract period could be applied to *all* unexercised option periods.⁹⁶

In *MCA Records, Inc. v. Newton-John*,⁹⁷ the court of appeal followed the reasoning expressed by Justice Traynor in *Brodel*. The court

93. 31 Cal. 2d 766, 192 P.2d 949 (1948).

94. *Id.* at 770, 192 P.2d at 950-51.

95. *Id.*, 192 P.2d at 951.

96. *Id.* at 773, 192 P.2d at 952-53.

97. 90 Cal. App. 3d 18, 153 Cal. Rptr. 153 (1979).

let stand a preliminary injunction issued by the trial court against Newton-John. However, it modified the length of the injunction so that it would not extend beyond the five-year term of the agreement.⁹⁸

The court rejected Newton-John's claim that an injunction could not be issued against her because she was suspended.⁹⁹ The court held that Newton-John was, in fact, not suspended, and could complete her contractual obligation whenever she desired.¹⁰⁰

The view that an injunction can automatically be enforced for the contract term and all unexercised option periods is not universally held. The British view was expressed in *Warner Bros. Pictures v. Nelson*.¹⁰¹ In *Nelson*, the court refused to issue an injunction against actress Bette Davis for six years, a term which represented her entire contract period plus all unexercised options. The injunction issued by the court was for only three years or until performance of the contract resumed, whichever was shorter. The court reasoned that an injunction should afford "reasonable protection and no more to the plaintiffs against the ill effect to them of the defendant's breach of contract."¹⁰²

Whether Justice Traynor's view or the British view is superior is arguable. The British view seems to account more for the equities of the individual case. It looks to the relative positions of the parties and makes a judicial value judgment. The Traynor view is more mechanical but assures consistency, something that, as has been noted, is lacking in most of the law relating to personal service contracts involving artists. Furthermore, given section 2855 of the Labor Code which limits the amount of time a contract may be enforced against an artist, Traynor's view is more reasonable in a state that limits such enforcement than in a jurisdiction without such safeguards. In California, an artist knows that an injunction may be issued for the duration of the contract including the option period, no more and no less. Both parties know exactly what they have bargained for when they sign the contract.

98. *Id.* at 24, 153 Cal. Rptr. at 155.

One reason that the court limited the term of the injunction was the finding that the injunction issued by the trial court was merely intended to preserve the status quo between the parties pending a final judgment. See *Lemat Corp v. Barry*, 275 Cal. App. 2d 671, 80 Cal. Rptr. 240 (1969).

The language of the court seemed to indicate that an extension of an injunction period would act as a disincentive for MCA to proceed swiftly through the litigation because the artist is enjoined from working during the period.

99. *Id.* at 23, 153 Cal. Rptr. at 154.

100. *Id.*

101. 1 K.B. 209 (1937).

102. *Id.* at 221.

IV. CONCLUSION

The issuance of an injunction against an artist is a powerful remedy. It prevents an artist from working in his chosen profession. However, when an artist refuses to fulfill his obligations, the company has few alternatives other than to obtain an injunction preventing the artist from working for a competitor. In a majority of disputes, the parties will settle, but that does not solve the problem for those who don't. Hopefully, the California courts will establish clearer standards in the future so that all concerned may more fully understand their rights.

Robert Steinberg

