



California Appeals Court Dismisses Olivia de Havilland's "Feud" with FX

By: Toby Butterfield & Alexandra Vaccaro

A California appeals court granted producers of film and television programs based on real life events a powerful new precedent by dismissing legendary actress Olivia de Havilland's lawsuit against FX Networks based on the portrayal of her in the recent FX docudrama miniseries titled *Feud: Bette and Joan*. Ms. de Havilland sued for misappropriation, violation of California's statutory right of publicity, false light invasion of privacy, and unjust enrichment, claiming Catherine Zeta Jones' portrayal of her in the miniseries was false and unflattering.

The appeals court stated: "Whether a person portrayed in one of these expressive works is a world-renowned film star – 'a living legend' – or a person no one knows, she or he does not own history. Nor does she or he have the legal right to control, dictate, approve, disapprove, or veto the creator's portrayal of actual people." The court found that *Feud* was "transformative" under California's statutory right of publicity law because the show's marketability and economic value comes primarily from the creativity, skill, and reputation of *Feud's* creators and actors. The court thus found that, under the First Amendment, producers are not required to secure agreements with individuals portrayed in such films and television programming.

The court also found that use of Ms. de Havilland's name with images of Catherine Zeta Jones in social media promotions for the miniseries did not support the actress' claim for violation of her right of publicity, because the constitutional protection afforded to *Feud* extends to the truthful use of Ms. de Havilland's name and likeness for the purpose of promoting the protected work.

This decision expands the creative boundaries of producers who choose to portray actual people in their content, and reaffirms the notion that "the right of publicity cannot, consistent with the First Amendment, be a right to control the celebrity's image by censoring disagreeable portrayals."

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