

Copyright Developments Blog Second Circuit Can't Help Finding Peretti Family's Termination Notice Ineffective

07.06.2022 By [Joelle A. Milov](#)

In [Acuti v. Authentic Brands Grp. LLC, 33 F.4th 131 \(2d Cir. May 4, 2022\)](#), the Second Circuit considered an appeal regarding the rights to the musical composition “Can’t Help Falling in Love,” written in part by Hugo Peretti and made popular by Elvis Presley. The song was created in 1961, under the 1909 Copyright Act, which provided for an initial copyright term of 28 years with a contingent right to renew the copyright for an additional 28-year renewal term.

In 1983, after the passage of the 1976 Copyright Act, Peretti and members of his family assigned their contingent rights and interests in the composition’s renewal term to Authentic Brands’ predecessors-in-interest. Hugo Peretti, however, died in 1986, three years before the end of the initial copyright term. In 1989, Peretti’s widow and daughters registered the copyright for its renewal term, and, in 2014 Peretti’s widow and daughter served Authentic Brands with a Notice of Termination, purporting to terminate the 1983 assignment, effective as of February 2018, pursuant to § 203 of the Copyright Act. After Authentic Brands disputed the termination, the Perettis sought a declaratory judgment that the termination notice was effective. The district court dismissed the Perettis’ claim, finding that the Notice of Termination was ineffective because the 1983 assignment was not an assignment “executed by the author” under § 203. The Perettis appealed, and the Second Circuit affirmed.

As relevant to *Acuti*, § 203(a) of the 1976 Act states that “[i]n the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under copyright, *executed by the author* on or after January 1, 1978, otherwise than by will, is subject to termination under [certain] conditions.” (Emphasis added) The section further allows for an author’s termination interest to pass to any successors-in-interest after death.

The Second Circuit rejected the Perettis’ argument that an author’s signature on a document granting rights in a copyrighted work necessarily constituted “execution” of a grant by the author. Section 204(a) of the Act states that a transfer of copyright

ownership must be “in writing and signed by the owner of the rights conveyed or such owner’s duly authorized agent.” But because a grantor cannot convey rights he or she does not yet own, the court held, based on a plain reading of the statute, that “a grant ‘executed by the author’ is a grant that is documented in writing, that is signed by the author, and that conveys rights owned by the author.”

The Second Circuit found that because at the time of the 1983 assignment Peretti’s interest in the renewal term had not yet vested, the 1983 assignment conveyed to Authentic Brands’ predecessors Peretti’s unvested right to renew the copyright, contingent upon him surviving to renew; Peretti’s wife’s unvested right to renew as Peretti’s surviving spouse, contingent upon Peretti not surviving to renew, her continuing marriage to Peretti, and her surviving to renew; and Peretti’s daughters’ unvested rights to renew as surviving children, contingent upon Peretti not surviving to renew and their surviving to renew. Because Peretti died prior to the renewal term, which began in 1989, his rights to the renewal term never vested, and therefore the 1983 assignment did not provide Authentic Brands’ predecessors with any rights from Peretti. The grants of rights by Peretti’s wife and daughters in the 1983 assignment were effective, but they were not “grants executed by the author.” Because the 1983 assignment did not fall within the purview of § 203, it could not be terminated by Peretti’s heirs in 2018.

The Second Circuit was not persuaded by the Perettis’ argument that its reading would contravene Congress’s intent to protect “authors and their statutory heirs against transfers that did not recognize the true long-term value of the works at issue.” Noting that at the time the 1983 assignment was effected, “Can’t Help Falling in Love” had already long been popularized by Presley and covered by famous musical artists like Wayne Newton and Bob Dylan, the Second Circuit found that “[t]here is no plausible argument that the Perettis did not understand the value of the Composition at the time that they entered into the 1983 Assignment. Perhaps the Peretti family could have negotiated a better deal in 1983. But the statute does not give the Perettis the right to do so now and requiring them to comply with the contractual grant of their rights is consistent with both the intent behind § 203 and its plain language.”

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