

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SCORPIO MUSIC S.A., et al. ,

Plaintiffs,

v.

VICTOR WILLIS,

Defendant.

Case No. 11cv1557 BTM(RBB)

**ORDER GRANTING MOTION TO
DISMISS**

Defendant Victor Willis (“Willis” or “Defendant”) has filed a motion to dismiss Plaintiffs’ Complaint. On March 20, 2012, the Court held oral argument on the motion. For the reasons discussed below, Defendant’s motion is **GRANTED**.

I. FACTUAL BACKGROUND

Defendant Victor Willis is the original lead singer of the Village People. This lawsuit concerns Willis’s attempt to terminate his post-1977 grants to Can’t Stop Music of his copyright interests in 33 musical compositions (“Compositions”), including the hit songs, “YMCA,” “In the Navy,” and “Go West.”

Plaintiff Scorpio Music S.A. (“Scorpio”) is a French corporation engaged in the business of publishing and otherwise commercially exploiting musical compositions. (Compl. ¶ 1.) Plaintiff Can’t Stop Productions, Inc., (“CSP”) is the exclusive sub-publisher and administrator in the United States of musical compositions published and owned by Scorpio

1 Music. (Compl. ¶ 2.) Can't Stop Music ("CSM") is a division of Plaintiff Can't Stop
2 Productions, Inc.

3 Plaintiffs allege that between 1977 and 1979, they hired Willis to translate the lyrics
4 of and/or create new lyrics for certain musical compositions which were owned and
5 published in France by Scorpio. Copyright registrations for the 33 Compositions at issue
6 credit Willis as being one of several writers. (Compl. ¶ 12.) By way of Adaptation
7 Agreements, Willis transferred his copyright interests in the subject Compositions to CSM,
8 and CSM thereupon assigned to Scorpio its rights in the lyrics. (Compl. ¶ 11.) The
9 Adaptation Agreements provided that Willis would receive a set percentage (12%-20%,
10 depending on the composition) of CSM's gross receipts from exploitation of the
11 Compositions.

12 In January 2011, Willis served on Plaintiffs a "Notice of Termination of Post-1977
13 Grants of Copyright on Certain Works of Victor Willis" with respect to his interests in the 33
14 Compositions. (Ex. A to Complaint.)

15 On July 14, 2011, Plaintiffs commenced this lawsuit. Plaintiffs challenge the validity
16 of the termination and seek a declaratory judgment that Willis has no right, title, or interest
17 in the copyrights to the Compositions, requiring Willis to withdraw the notice of termination,
18 and enjoining Willis from making any claims to the copyrights in the Compositions. In the
19 event that Willis is found to have a right to terminate, Plaintiffs seek a declaration that
20 (1) Willis's reversion of rights be limited to "the same percentage ownership as he receives
21 as compensation relating to the Compositions and as set forth in the Adaptation
22 Agreements"; and (2) Willis be enjoined from terminating any licenses issued or derivative
23 works authorized, by Plaintiffs, which existed prior to the termination of the copyright
24 assignment.

25 //
26 //
27 //
28 //

1 **II. DISCUSSION**

2 **A. Valdiity of the Notice of Termination**

3 Plaintiffs' main argument is that Willis's notice of termination is not valid because
4 Willis is the only author who served a notice of termination. According to Plaintiffs, under
5 17 U.S.C. § 203(a)(1), a majority of all of the authors who transferred their copyright interests
6 in a joint work, whether their transfers were part of the same transaction or separate
7 transactions, must join in a termination for it to be valid. Willis and Amicus Songwriters'
8 Guild of America ("SGA"), on the other hand, contend that since Willis was the only person
9 who executed the grants of his copyright interests in the Compositions, he alone has the
10 ability to terminate those grants. The Court agrees with Willis and SGA.

11 Because the transfers of copyright at issue in this case occurred after January 1,
12 1978, the Copyright Act of 1976 ("Act") governs. The Act provides authors and their
13 statutory successors with the ability to terminate a transfer of copyright or license by serving
14 advance notice under specified time limits and conditions.

15 17 U.S.C. § 203 provides:

16 (a) Conditions for Termination.--In the case of any work other than a work
17 made for hire, the exclusive or nonexclusive grant of a transfer or license of
18 copyright or of any right under a copyright, executed by the author on or after
19 January 1, 1978, otherwise than by will, is subject to termination under the
20 following conditions:

21 *(1) In the case of a grant executed by one author, termination of*
22 *the grant may be effected by that author or, if the author is dead,*
23 *by the person or persons who, under clause (2) of this*
24 *subsection, own and are entitled to exercise a total of more than*
25 *one-half of that author's termination interest. In the case of a*
26 *grant executed by two or more authors of a joint work,*
27 *termination of the grant may be effected by a majority of the*
28 *authors who executed it; if any of such authors is dead, the*
termination interest of any such author may be exercised as a
unit by the person or persons who, under clause (2) of this
subsection, own and are entitled to exercise a total of more than
one-half of that author's interest.

26 Termination of the grant may be effected at any time during a period of five years beginning
27 at the end of thirty-five years from the date of execution of the grant. 17 U.S.C. § 203(a)(3).
28 To terminate a grant, a termination notice must be served on the grantee or grantee's
successor not less than two nor more than ten years before the date of termination specified

1 in the notice. 17 U.S.C. § 203(a)(4)(A).

2 The issue before the Court is whether, in a case where joint authors of a work transfer
3 their respective copyright interests through separate agreements, a single author may alone
4 terminate his separate grant of his copyright interest in the joint work or whether a majority
5 of all the authors is necessary to terminate that grant. Upon consideration of the language
6 and purpose of 17 U.S.C. § 203 in conjunction with the law governing the rights of joint
7 authors, the Court concludes that a joint author who separately transfers his copyright
8 interest may unilaterally terminate that grant.

9 When interpreting a statute, we start with the “plain meaning” of the statute’s text. In
10 re Roman Catholic Archbishop of Portland in Oregon, 661 F.3d 417, 433 (9th Cir. 2011). As
11 explained by the Supreme Court, “courts must presume that a legislature says in a statute
12 what it means and means in a statute what it says there.” Conn. Nat’l Bank v. Germain, 503
13 U.S. 249, 253-54 (1992). However, “we do more than view word or sub-sections in isolation.
14 We derive meaning from context, and this requires reading the relevant statutory provisions
15 as a whole.” Hanford Downwinders Coal., Inc. v. Dowdle, 71 F.3d 1469, 1475 (9th Cir.
16 1995).

17 Section 203(a)(1) provides, “In the case of a grant executed by one author,
18 termination of the grant may be effected by that author.” Section 203(a)(1) goes on to
19 provide, “In the case of a grant executed by two or more authors of a joint work, termination
20 of the grant may be effected by a majority of the authors who executed it.” When referring
21 to a grant executed by two or more authors of a joint work, section 203(a)(1) refers to a
22 “grant” in the singular, not “grants.” Thus, under the plain meaning of the statute, if two or
23 more joint authors join in a grant of their copyright interests, a majority of the authors is
24 necessary to terminate the grant. If, however, a single joint author enters into a grant of his
25 copyright interest, that author alone can terminate his grant.

26 The Court’s reading of section 203(a)(1) harmonizes with the law governing the rights
27 of joint authors, both as it existed at the time of the passage of the Act and as it exists today.
28 As recognized in the House Report accompanying the passage of the Copyright Act of 1976,

1 “Under the bill, as under the present law, coowners of a copyright would be treated generally
2 as tenants in common, with each coowner having an independent right to use of [sic] license
3 the use of a work, subject to a duty of accounting to the other coowners for any profit.”
4 H.R.Rep. No. 94-1476, at 121 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5736.¹ Then,
5 as now, each co-owner of a joint work becomes a holder of an undivided interest in the
6 whole. Pye v. Mitchell, 574 F.2d 476, 480 (9th Cir. 1978) (citing to 1 Nimmer on Copyright
7 § 69 (1976)). Thus, “[i]n the absence of an agreement to the contrary, one joint owner may
8 always transfer his interest in the joint work to a third party, subject only to the general
9 requirements of a valid transfer of copyright.” Nimmer on Copyright § 6.11 (2011)
10 (“Nimmer”).

11 Congress was aware that a single joint author may grant his interest in the joint work
12 separately from his co-authors or may join in a grant with one or more of his co-authors.
13 Knowing this, Congress legislated that “[i]n the case of a grant executed by two or more
14 authors of a joint work,” a majority of the authors who executed the grant is necessary for
15 termination. 18 U.S.C. § 203(a)(1) (Emphasis added.) In other words, *when* two or more
16 authors of a joint work execute a joint grant, a majority of the authors who executed the grant
17 is necessary to terminate the grant. Section 203(a)(1) certainly does not *require* that a joint
18 author enter into a joint grant with one or more of his co-authors. Nor does the statute
19 provide that where two or more joint authors enter into separate *grants*, a majority of those
20 authors is needed to terminate any one of those *grants*.

21 Plaintiffs argue that the term “grant” as used in section 203(a)(1) refers collectively
22 to all transfers by joint authors, even if the transfers were separate transactions. This
23 argument is not persuasive. Nowhere does the statute indicate that the term “grant” has a
24 special meaning and encompasses all transfers of interest by joint authors, regardless of
25 whether the joint authors individually transferred their interests through different instruments
26

27
28 ¹ The Act added section 201(a), which states, “The authors of a joint work are coowners of copyright in the work.”

1 at different times.²

2 Furthermore, it makes sense to interpret the term “grant” to refer to a *single*
3 transaction whereby the rights of one or more joint authors was transferred, because the
4 time for terminating a grant is calculated from the date of execution of the grant. Under
5 Plaintiffs’ interpretation, in the case of separate transfers by joint authors, there would be
6 uncertainty regarding the date of execution, which could become a moving target. For
7 example, if joint authors A, B, C, and D each separately transferred their interests, with an
8 interval of several years between each transfer, would the “date of execution” keep changing
9 as each author transfers his/her interest? If so, it could be many years after A’s transfer that
10 the “grant” is considered “executed.”

11 Finally, it would be contrary to the purpose of the Act to require a majority of all joint
12 authors who had, at various times, transferred their copyright interests in a joint work to
13 terminate the legally permissible *separate* grant by one joint author of his undivided copyright
14 interest in the work. The purpose of the Act was to “safeguard[] authors against
15 unremunerative transfers” and address “the unequal bargaining position of authors, resulting
16 in part from the impossibility of determining a work’s value until it has been exploited.” H.R.
17 Rep. No. 94-1476, at 124 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5740. Under
18 Plaintiffs’ interpretation, it would be more difficult to terminate an individual grant than it
19 would be to make it in the first place.

20 Plaintiffs attempt to support their position by pointing to the law governing pre-1978
21 grants. Grants executed prior to January 1, 1978 are terminable by each executing joint
22 author (to the extent of the particular author’s interest), even if a majority of the executing
23 joint authors do not join in the termination. 17 U.S.C. § 304(c)(1). As discussed in Nimmer,
24 § 11.03, it appears that Congress treated pre-1978 grants differently because if a grantor of
25 renewal rights failed to survive until such rights vested, the renewal rights would pass to the

26

27 ² In this case, it also appears that at least some of the joint authors granted their
28 copyright interests to Scorpio, not CSM, as Willis did. Thus, Plaintiffs would include under
the umbrella of a “grant,” separate transactions where copyright interests were transferred
to related but different entities.

1 grantor's successors and the original grantee would take nothing. Accordingly, "[b]ecause
2 joint-author grants of renewal rights thus terminate individually by operation of law upon an
3 author's death, it was thought 'inappropriate' to require anything more than individual
4 termination via the termination provisions." Id. The stricter requirement for termination of
5 post-1977 grants begs the question of whether a "grant" may encompass separate transfers
6 of interest by joint authors and does not shed any light on the matter before the Court.

7 Plaintiffs attempt to support their position by relying on language in Sweet Music, Inc
8 v. Melrose Music Corp., 189 F. Supp. 655 (S.D. Cal. 1960), where the court explained that
9 it did not make a difference to the outcome of the case that plaintiff joined in the same
10 assignment agreement as the deceased co-author as opposed to having executed a
11 separate assignment. However, Sweet Music concerned the enforceability of an assignment
12 of renewal interests by one author where a co-author, who also assigned his renewal
13 interests, died prior to renewal. Sweet Music did not concern the termination of grants under
14 the Copyright Act of 1976 and does not shed light on the issue before the Court.

15 The Court concludes that because Willis granted his copyright interests in the
16 Compositions separately from the other co-authors, Willis may, under 17 U.S.C. § 203,
17 unilaterally terminate his grants. Thus, Plaintiffs' declaratory relief claim fails to the extent
18 it is based on the inability of Willis to terminate his grants of copyright. To be clear, Willis's
19 termination affects only the copyright interests that he previously transferred (his undivided
20 interest in the joint work). The copyright interests transferred by the other co-authors will not
21 be affected by Willis's termination.

22 23 **B. Writer for Hire**

24 In their Complaint, Plaintiffs allege that Willis has no rights in the copyrights at issue
25 because he was a "writer for hire" who rendered his services as an employee of CSM. At
26 oral argument, counsel for Plaintiffs represented that they were withdrawing this claim.

27

28

1 **C. Percentage of Copyright Interest**

2 In the event Willis is found to have a right to terminate his grants of copyright interest
3 in the Compositions, Plaintiffs seek a declaration that Willis “be limited to the same
4 percentage ownership as he receives as compensation relating to the Compositions and as
5 set forth in the Agreements.” (Compl. at 9.) However, Plaintiffs’ claim is not supported by
6 the law.

7 Upon termination, Willis would get back what he transferred – his undivided interest
8 in the whole. See 17 U.S.C. § 203(b) (explaining that upon the effective date of termination,
9 “all rights under this title that were covered by the terminated grants revert to the author . .
10 . .”) Absent a different agreement among the joint authors (of which there is no evidence in
11 this case), the joint authors shared equally in the ownership of the joint work, even if their
12 respective contributions to the joint work were not equal. Nimmer, § 6.08. Thus, if Willis
13 was one of three joint authors of a musical composition, Willis would have a 1/3 undivided
14 copyright interest in the composition. If Willis granted his copyright interest in the
15 composition to CSM and then later terminated that grant, Willis would get back his 1/3
16 undivided copyright interest, regardless of what percentage royalty he was paid during
17 CSM’s ownership of the copyright interest.

18 Plaintiffs do not claim that the royalty percentages, which ranged from 12 to 20%,
19 were based on the percentage of Willis’s copyright interests, and it does not appear that this
20 was the case. For example, Willis is one of three authors listed on the copyright registration
21 for “YMCA.” (Def. Ex. C.) Assuming the three authors were actually joint authors, Willis has
22 a 1/3 undivided interest in the copyright. However, the Adaptation Agreement pertaining to
23 YMCA provides for a 20% royalty. (Def. Ex. B.)

24 Plaintiffs do not cite any legal authority supporting the proposition that upon
25 termination of his grants, Willis does not get back the percentage of copyright interest he
26 granted, but, rather, is limited to a percentage of ownership equal to the royalty percentage.
27 The Court concludes that Plaintiffs’ position lacks merit and dismisses Plaintiffs’ declaratory
28 relief claim on this issue.

1 It appears that there is a dispute between Plaintiffs and Willis, with respect to some
2 or all of the Compositions, regarding the percentage of copyright interest Willis originally
3 held, granted, and wants back. At oral argument, counsel for Willis indicated that Willis
4 contends that Henri Belolo, one of the individuals listed as an author on the copyright
5 registrations for some or all of the Compositions, was not actually a joint author. If Willis is
6 correct, his undivided interest in the Compositions is larger than it appears. For example,
7 Willis would have a 1/2 undivided interest in YMCA instead of a 1/3 undivided interest.

8 The Complaint makes a passing reference to the dispute regarding authorship. The
9 Complaint states that upon information and belief, Willis claims the right to recapture at least
10 half of the copyrights in each of the Compositions. (Compl. ¶ 34.) The Complaint also
11 states that Willis “ignores the existence of other people listed as writers of the Compositions
12 to claim that he, alone, wrote all of their lyrics.” (Compl. ¶ 35.) However, the Complaint does
13 not seek a declaration regarding the determination of the issue of authorship and the
14 percentage of copyright interest Willis granted and is entitled to receive back.

15 It is necessary for Plaintiffs to know what percentage of the copyright interest Willis
16 is entitled to receive back, because, among other things, it will affect Plaintiffs’ duty to
17 account to Willis and the other joint author(s). Therefore, the Court will allow Plaintiffs to
18 amend their Complaint to seek declaratory relief on this issue.

19
20 **D. Statute of Limitations**

21 In the Complaint, Plaintiffs allege that Willis’s claim to the copyright in the
22 Compositions is somehow time-barred.

23 To the extent Plaintiffs argue that Willis is time-barred from arguing that a “co-author”
24 listed on a copyright registration is not actually a joint author, this argument is premature.
25 As already discussed, Plaintiffs have not yet sought a declaration regarding the percentage
26 of Willis’s copyright interest in each of the Compositions. To the extent Plaintiffs argue that
27 Willis is time-barred from claiming that the percentage of his copyright interests exceeds the
28 royalty percentages set forth in the Adaptation Agreements, the Court rejects Plaintiffs’

1 argument. For the reasons discussed above, Plaintiffs' claim that the percentage of
2 copyright interest recoverable by Willis is capped by the royalty percentage has no legal
3 basis, and Plaintiffs have not explained why Willis should be time-barred from asserting his
4 rights under the law.

5

6 **E. Termination of Existing Licenses and Derivative Works**

7 Plaintiffs also seek a declaration that Willis is precluded from terminating any licenses
8 issued or derivative works authorized by Plaintiffs prior to the termination of the copyright
9 assignment. Willis does not dispute that existing derivative works may continue to be
10 exploited under existing licenses under the terms of the grants and the existing licenses.
11 See 17 U.S.C. § 203(b)(1). Therefore, it does not appear that there is a controversy in this
12 regard. If Plaintiffs can point to facts showing that there is a controversy regarding utilization
13 of derivative works prepared prior to the termination of the grants, Plaintiffs may amend their
14 Complaint to include these facts.

15

16

III. CONCLUSION

17 For the reasons discussed above, Willis's motion to dismiss is **GRANTED**. Plaintiffs'
18 Complaint is **DISMISSED** for failure to state a claim. The Court grants Plaintiffs leave to file
19 an amended complaint within 30 days of the entry of this Order. If Plaintiffs do not file an
20 amended complaint, this case shall be closed.

21 **IT IS SO ORDERED.**

22 DATED: May 7, 2012

23

24


BARRY TED MOSKOWITZ, Chief Judge
United States District Court

25

26

27

28