UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CYRIL E. VETTER AND VETTER COMMUNICATIONS CORPORATION	CIVIL ACTION
VERSUS	23-1369-SDD-EWD
ROBERT RESNIK *individually and* *d/b/a* RESNIK MUSIC GROUP	

RULING

This matter is before the Court on the *Motion to Dismiss*[1] filed by Defendant, Robert Resnik, individually and d/b/a Resnik Music Group ("Defendant"). Plaintiffs, Cyril E. Vetter and Vetter Communications Corporation (collectively, "Plaintiffs"), filed an *Opposition*,[2] to which Defendant filed a *Reply*.[3] Plaintiffs then filed a *Sur-Reply*.[4] For the following reasons, the motion will be denied.

I. BACKGROUND

A. Facts

This case arises from a disagreement regarding the rights to the foreign exploitation of a musical work co-written by Plaintiff, Cyril E. Vetter ("Vetter"). Plaintiffs' lawsuit alleges the following facts. In 1962, Vetter and his friend Don Smith ("Smith") co-authored a song entitled "Double Shot (Of My Baby's Love)" (the "Song").[5] In 1963, Vetter and Smith assigned all of their interests in the Song to Windsong Music Publishers, Inc.

[1] Rec. Doc. 12.
[2] Rec. Doc. 17.
[3] Rec. Doc. 23.
[4] Rec. Doc. 27.
[5] Rec. Doc. 1, ¶¶ 51–53.

("Windsong").[6] In exchange for the agreed-upon price of one dollar, Windsong purchased exclusive rights to the Song throughout the world for the full term of copyright protection, as well as a "contingent assignment of all renewal period rights" under the Copyright Act of 1909.[7] This transfer of rights to Windsong will be referred to throughout this ruling as the "Initial Assignment."

In 1966, after the Song gained some popularity, Windsong obtained a U.S. copyright registration for the Song (the "Original Copyright").[8] The registration, secured under the Copyright Act of 1909, was to subsist for twenty-eight years with a possible renewal term for an additional period of the same length.[9]

Smith died in 1972.[10] In 1994 (after the twenty-eight-year term of Windsong's Original Copyright ended), Smith's heirs and Vetter obtained a renewal copyright in the Song (the "Renewal Copyright").[11] However, as mentioned above, Smith and Vetter both transferred their renewal interests to Windsong in the Initial Assignment in 1963.[12] Under Supreme Court precedent, the parties agree that such a renewal interest assignment is only enforceable against an author if he is living when those rights vest; in other words, an author's grant of the renewal interest is "contingent" upon the author being alive at the commencement of the renewal period.[13] Accordingly, Plaintiffs concede that Vetter's promise of his Renewal Copyright interest to Windsong in the Initial Assignment was

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[6] *Id.* at ¶ 57. The signed agreement effecting this transfer is attached to the Complaint (*see* Rec. Doc. 6-1).
[7] *Id.* at ¶¶ 58, 59. For context, a "renewal copyright" under the Copyright Act of 1909 is essentially a new term of copyright protection that can be obtained after the term of the original copyright expires. Renewal copyrights will be explained in more detail below.
[8] *Id.* at ¶ 63.
[9] *Id.* at ¶ 64.
[10] *Id.* at ¶ 65.
[11] *Id.* at ¶ 73. The renewal certificate is attached to the Complaint (*see* Rec. Doc. 6-2).
[12] Rec. Doc. 17, pp. 2–3.
[13] *See Stewart v. Abend*, 495 U.S. 207, 220 (1990) ("if the author dies before the commencement of the renewal period, the assignee holds nothing."). *See also* Rec Doc. 1, ¶ 108; Rec. Doc. 12-1, p. 14.

enforceable because Vetter was alive at the time the renewal rights vested.[14] Conversely, because Smith was not alive at the time the renewal rights vested, the parties agree that the transfer of Smith's renewal rights to Windsong in the Initial Assignment was unenforceable; as a result, those rights "vested in Mr. Smith's heirs clear of all rights, interests, or licenses granted under the Original Copyright."[15] Therefore, although Vetter's interest in the Renewal Copyright had been validly transferred to Windsong,[16] Smith's renewal interest vested in Smith's heirs clear of all rights granted to Windsong through the Initial Assignment.

Accordingly, as of 1994, Windsong held a fifty percent interest in the Renewal Copyright (by way of the Initial Assignment of Vetter's renewal interest), and Smith's heirs held the other fifty percent (because of Smith's death before the renewal interest vested). In 1996, Plaintiff Vetter Communications Corporation ("Vetter Communications") purchased Smith's heirs' renewal copyright interest.[17] Later that year, Windsong transferred fifty percent of its renewal interest in the Song to another company, Lyresong Music, Inc. ("Lyresong").[18] Thus, as of 1996, interest in the Renewal Copyright was held by Vetter Communications (50%), Windsong (25%), and Lyresong (25%). Throughout this ruling, these interests will be referred to as a given party's "Renewal Copyright Interest."

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[14] Rec. Doc. 1, ¶ 74.
[15] *Id.* at ¶¶ 108, 109. *See also* Rec. Doc. 12-1, pp. 12–13, where Defendant acknowledges the correctness of this part of the Complaint.
[16] Evidently, in 1996, Windsong executed a document (attached to the Complaint at Rec. Doc. 6-3) purporting to "reduce to writing" the transfer of Vetter's renewal interest to Windsong. *See* Rec. Doc. 1, ¶¶ 77–79; Rec. Doc. 12-1, p. 3. Plaintiffs contend there was "no legitimate basis" for this 1996 assignment because the transfer of Vetter's renewal interest had already been accomplished by the Initial Assignment and Vetter's survival of the term of the Original Copyright. The Court finds it unnecessary to address Plaintiff's contention because, whether or not the 1996 document is valid, the parties appear to agree upon the ultimate fact that Vetter's renewal interest went to Windsong.
[17] Rec. Doc. 1, ¶ 76.
[18] *Id.* at ¶ 80. This document is attached to the Complaint (*see* Rec. Doc. 6-4).

In 2019, Vetter transmitted a termination notice to Windsong and Lyresong pursuant to Section 304 of the Copyright Act of 1976 (the "Notice of Termination").[19] As will be discussed, this is a statutory mechanism that allows the termination and recapture of rights in a copyrighted work that were previously alienated. According to the Notice of Termination, Vetter sought to terminate all rights in the Song that he had granted Windsong through the Initial Assignment, and those rights would be "recaptured" by Vetter (hereinafter referred to as "Vetter's Recaptured Interest").[20] The effective date of the Notice of Termination was to be May 3, 2022.[21]

Later in 2019, Windsong informed Plaintiffs that Windsong had sold its assets to Defendant herein, Robert Resnik and/or Resnik Music Group.[22] Accordingly, Renewal Copyright Interests were held at that point by Vetter Communications (50%), Defendant (25%), and Lyresong (25%).

Plaintiffs allege that on the effective date of the Notice of Termination (May 3, 2022), Vetter "retook ownership of his authorship share" of the Song (i.e., Vetter's Recaptured Interest).[23] Later in 2022, Plaintiffs were approached by American Broadcasting Companies, Inc. ("ABC") regarding possible use of the Song on an episode of a television show to be broadcast worldwide.[24] After Plaintiffs provided ABC with a quote, ABC informed Plaintiffs that Defendant, notwithstanding the Notice of Termination, was claiming a twenty-five percent ownership interest in the Song.[25]

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[19] *Id.* at ¶ 84. Documents indicating Windsong and Lyresong's receipt of the Notice of Termination are attached to the Complaint (*see* Rec. Docs. 6-5, 6-6), as well as the certificate of recordation of the Notice of Termination (*see* Rec. Doc. 6-7).
[20] *Id.* at ¶ 85.
[21] *Id.*
[22] *Id.* at ¶ 89.
[23] *Id.* at ¶ 92.
[24] *Id.* at ¶¶ 93–94.
[25] *Id.* at ¶¶ 95–96.

B. The Parties' Dispute

The parties disagree on the geographical scope of both Vetter Communications' Renewal Copyright Interest (which it purchased from Smith's heirs) and Vetter's Recaptured Interest (through the Notice of Termination). Count One of Plaintiffs' Complaint seeks a declaration from this Court that Vetter Communications is the sole owner *throughout the world* of its Renewal Copyright Interest that it acquired from Smith's heirs.[26] In short, Plaintiffs contend that all of Windsong's rights, both domestic and foreign, in the Original Copyright derived from Smith through the Initial Assignment were cut off when Smith's Renewal Copyright Interest vested in Smith's heirs.[27] Plaintiffs argue this gave Smith's heirs a completely new property interest, which was later purchased by Vetter Communications.[28] As a result, Plaintiffs assert that Vetter Communications is the sole owner of this Renewal Copyright Interest, and that this right extends worldwide.[29]

Count Two of the Complaint seeks a declaration that Vetter is the sole owner *throughout the world* of Vetter's Recaptured Interest resulting from his Notice of Termination.[30] Plaintiffs allege that the Notice of Termination cut off all of Defendant's rights, both domestic and foreign, in the Renewal Copyright Interest derived from Vetter's transfer of same through the Initial Assignment to Windsong.[31] As a result, Plaintiffs contend Vetter's Recaptured Interest includes both domestic and foreign rights to exploit the Song.[32]

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[26] *Id.* at ¶ 113.
[27] *Id.* at ¶¶ 108–113.
[28] *Id.*
[29] *Id.*
[30] *Id.* at ¶ 122.
[31] *Id.* at ¶ 116–119.
[32] *Id.* at ¶ 119–122.

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