

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ALEXANDRA CLANCY,  
*Plaintiff*

v.

JACK RYAN ENTERPRISES, LTD., *et al*,  
*Defendants.*

Civil Action No. ELH-17-3371

**MEMORANDUM OPINION**

In this intellectual property case, the Court has been asked to resolve competing claims for ownership of the novels and fictional characters created by the late Thomas L. Clancy, Jr., a renowned author, better known as Tom Clancy (“Clancy” or “Decedent”). The dispute includes opposing claims of ownership of the iconic character Jack Ryan, who is featured in many of Clancy’s best-selling novels. Although Clancy witnessed Jack Ryan leaping from the pages of his books to the big screen, Clancy probably never imagined a non-fictional chapter featuring Jack Ryan in a bitter familial dispute with respect to Clancy’s estate.

Plaintiff Alexandra Clancy and the Decedent were married from 1999 until Clancy’s death in October 2013. Together, they had one daughter. Ms. Clancy and her daughter have a combined interest of 60% in Clancy’s estate. From 1969 until 1999, Clancy was married to Wanda King, with whom he had four children, and from whom he separated in or around 1996. *See* ECF 135-1 at 19<sup>1</sup>; ECF 136-18; *infra* note 11. Clancy’s children born to Ms. King hold a combined 40% interest in the estate.

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<sup>1</sup> In the Memorandum Opinion, the Court cites to the electronic pagination, which does not always correspond to the page number imprinted on the particular submission.

On August 25, 2017, Ms. Clancy, as surviving spouse of the Decedent, filed a declaratory judgment action in the Circuit Court for Baltimore City against defendants J.W. Thompson Webb (“Topper”), as personal representative of the Estate of Thomas L. Clancy, Jr. (the “Estate”), and three separate business entities formed by Clancy: Jack Ryan Enterprises, Ltd. (“JREL” or “JRE”); Jack Ryan Limited Partnership (“JRLP”); and Rubicon, Inc. (“Rubicon”). ECF 2 (the “Complaint”).<sup>2</sup> She sought, *inter alia*, to resolve issues as to ownership of various fictional characters created by Clancy. *Id.* JREL and JRLP (collectively, the “JR Entities”) filed a counterclaim. ECF 9 (the “Counterclaim”).

The JR Entities timely removed the case to this Court, pursuant to 28 U.S.C. §§ 1338 and 1454. ECF 1 (Notice of Removal). The Court has jurisdiction because some of the claims arise under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the “Act” or the “Copyright Act”). And, the Court may exercise supplemental jurisdiction over the remaining claims. *See* 28 U.S.C. § 1367; *see also* ECF 34 (Order of February 5, 2018).

On February 22, 2019, Ms. Clancy filed an Amended Complaint (ECF 60), seeking a declaration of ownership of Clancy’s “literary legacy,” pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* ECF 139-1 at 10. In particular, plaintiff seeks a declaration that the Estate is the owner of Jack Ryan (Count I); John Clark (Count II); and “The Campus characters” (Count V). Ms. Clancy also seeks a declaration that the Estate owns the rights to the “JREL Books” (Count III) and the “JRLP Books” (Count IV), on the ground that they were not created as works made for hire within the meaning of 17 U.S.C. § 101, and were not validly assigned either to JREL or JRLP. In Counts III and IV, plaintiff also seeks a declaration that, to the extent the JREL Books and JRLP Books were

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<sup>2</sup> As discussed, *infra*, both Webb and Rubicon are nominal parties in this case.

validly assigned to JREL or JRLP, the assignments are terminable by the majority of Clancy's heirs, pursuant to 17 U.S.C. § 203.

The JREL Books include *The Patriot Games* (1987); *The Cardinal of the Kremlin* (1988); *Clear and Present Danger* (1989); *The Sum of All Fears* (1991); and a co-authored book, *Red Storm Rising* (1986). The JRLP Books include *Without Remorse* (1993); *Debt of Honor* (1994); and *Executive Orders* (1996). I shall sometimes refer to the JREL Books and JRLP Books collectively as the "JR Books."

The JR Entities' ownership of other books, such as *The Hunt for Red October* (1984) ("*Hunt*"), is not in dispute. And, it was in *Hunt* that Jack Ryan made his debut.

The Counterclaim asserts three claims for declaratory relief. ECF 9. In particular, defendants seek a declaration that the JR Entities "have rights in the characters [including Jack Ryan] as introduced and/or further developed in the books to which they hold the registered United States Copyright" by "reason of the agreements entered into by" Clancy (Count I) and as a matter of federal copyright law (Count II). ECF 9 at 5-9. Thus, Counts I and II of the Counterclaim are essentially the converse of Counts I through IV of the Amended Complaint. In addition, in Count III, defendants seek a declaration that "the Termination Notice" dated March 4, 2016, executed by plaintiff to terminate the transfer of the copyright ownership of *The Hunt* to the United States Naval Institute ("USNI" or the "Institute"), is "overbroad and ineffective at least to the extent that it seeks to affect the 'copyright to the characters described in Hunt.'" *Id.* at 11.

The JR Entities have moved for summary judgment on all counts of plaintiff's Amended Complaint and the Counterclaim. ECF 135. The motion is supported by a memorandum of law (ECF 135-1) (collectively, the "JR Entities' Motion") and 62 exhibits (ECF 135-3 to ECF 135-

64), of which 29 were filed under seal. ECF 136-1 to ECF 136-29 (sealed exhibits). They contend that plaintiff's claims in the Amended Complaint are barred by the statute of limitations under the Copyright Act, 17 U.S.C. § 507(b). ECF 135-1 at 29. Further, they posit that they have ownership rights as to the JR Books and the characters, including John Clark, because they were works for hire or validly assigned to the JR Entities. *Id.* at 31-45. Moreover, they claim that they have ownership rights as to the Jack Ryan character as delineated in *Hunt*. *Id.* at 45-55. In addition, the JR Entities maintain that plaintiff's Termination Notice is overbroad and ineffective. *Id.* at 56-58.

Ms. Clancy has filed a combined cross-motion for summary judgment with respect to Counts I through IV of the Amended Complaint and opposition to the JR Entities' Motion. ECF 139.<sup>3</sup> The motion is supported by a memorandum of law (ECF 139-1) (collectively, "Plaintiff's Motion") and 33 exhibits (ECF 139-3 to ECF 139-35), of which eleven were filed under seal. ECF 140-1 to ECF 140-11 (sealed exhibits).

Plaintiff characterizes Clancy's Estate as "sprawling and complex," with several business entities that were created to "minimize taxes" and "to shield" Clancy from liability. ECF 139-1 at 9. However, she insists that these "tools" were not intended to deprive Clancy of his "lucrative literary enterprise." *Id.* In her view, Ms. King seeks "to relitigate her divorce and to score a larger share of the literary enterprise than was provided under the divorce settlement." *Id.* at 10.

Ms. Clancy insists that her claims are not barred by limitations. *Id.* at 23. Further, she claims that the Estate owns the Jack Ryan character as presented in *Hunt* because a character is a

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<sup>3</sup> ECF 139 is titled only as a motion for summary judgment. But, ECF 139-1 reflects that the submission is both a cross-motion for summary judgment and an opposition to the JR Entities' Motion. Moreover, plaintiff asserts in the text that she is entitled to summary judgment with respect to the Counterclaim. *See* ECF 139-1 at 11.

protected element of a copyright and it was never assigned to the JR Entities. *Id.* at 31-43. And, she asserts that the JR Books were not works for hire for JREL or JRLP, so the JR Books and the characters therein, including John Clark, remained Clancy's property at his death. *Id.* at 43-54. Finally, she contends that her Termination Notice is valid. *Id.* at 56-57.

The JR Entities filed a combined opposition to Plaintiff's Motion and a reply in support of their own motion. ECF 145. Plaintiff has replied (ECF 149) and she has submitted additional exhibits. ECF 149-2 to ECF 149-7; ECF 150 (sealed exhibit).

In addition, the JR Entities filed a "Motion For Leave to File a Five-Page Surreply" (ECF 153), along with the proposed surreply. ECF 153-1 (collectively, the "Motion for Surreply"). Plaintiff opposes the Motion for Surreply. ECF 154. Defendants did not reply, and the time to do so has expired. *See* Docket.

The motions are fully briefed and no hearing is necessary to resolve them. *See* Local Rule 105.6. For the reasons that follow, I shall grant the Motion for Surreply (ECF 153). I shall also grant the JR Entities' Motion (ECF 135) in part and deny it in part. In particular, I shall grant the JR Entities' Motion as to claims that the JR Books, including the characters therein, were validly assigned to the JR Entities. Counts II, III, and IV of the Amended Complaint and Counts I and II of the Counterclaim all include multiple claims, including as to the assignment of the JR Books and the characters therein. Therefore, I shall grant the defense motion as to Counts II, III, and IV of the Amended Complaint and Counts I and II of the Counterclaim, but only as to the claims regarding assignment. I shall otherwise deny the JR Entities' Motion. I shall also deny Plaintiff's Motion. In addition, I shall dismiss Count V of the Amended Complaint.

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