

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WILLIAM B. CHAMPLIN,

Plaintiff,

-v-

MUSIC SALES CORP. *d/b/a* WISE MUSIC, *and*  
WISE MUSIC GROUP LTD.,

Defendants.

21 Civ. 7688 (PAE)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Plaintiff William B. Champlin, a songwriter and performer, brings claims of copyright infringement under section 203 of the Copyright Act of 1976 (the “Act”), 17 U.S.C. § 203, and for conversion under New York law against defendants Music Sales Corp. (“Wise Music”) and Wise Music Group (“WMG”) (together, “defendants”). Champlin claims that defendants wrongfully failed to relinquish to him their ownership interest in “After the Love Has Gone” (the “Song”), a song that Champlin co-authored with non-parties David Foster and Jay Graydon in 1978. He claims that defendants have continued to wrongfully collect royalties for his share in the Song’s interest. He claims that defendants were required to relinquish their ownership interests in the Song because, on two occasions, defendants’ rights in the Song were terminated by valid termination notices pursuant to section 203—one executed by Champlin, and another executed by Foster and Graydon.

Defendants dispute the legal adequacy of both termination notices. They move now to dismiss Champlin’s amended complaint under Rule 12(b)(6) for failure to state a claim. They

also move to dismiss Champlin's state-law conversion claim as preempted. For the reasons that follow, the Court grants in part and denies in part the motion to dismiss.

## **I. Background**

### **A. Factual Background<sup>1</sup>**

#### **1. The Parties and Other Relevant Entities**

Plaintiff Champlin, a California resident, is a Grammy Award-winning songwriter and performer. AC ¶ 7. He owns non-party Nightworm Music ("Nightworm"), a music publishing company. *Id.* ¶ 28.

Defendant Wise Music, a music publisher, is a New York corporation with its principal place of business in New York City. *Id.* ¶ 8. Defendant WMG, Wise Music's parent company, is a limited company headquartered in London, United Kingdom, with United States offices in New York City. *Id.* ¶ 9.

Non-parties Bobette Music ("Bobette"), Noted for the Record ("Noted"), New Music Inc. ("New Music"), Charleville Music ("Charleville"), Acme Music ("Acme"), EMI Blackwood Music ("EMI"), and Sony/ATV Music Publishing ("Sony") are music publishing companies. Each, as discussed below, had some ownership of the Song between 1978 and 2016. *Id.* ¶¶ 16, 18, 20.

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<sup>1</sup> This factual account draws from the Amended Complaint. Dkt. 16 ("AC"). *See DiFolco v. MSNBC Cable LLC*, 622 F.3d 104, 111 (2d Cir. 2010) ("In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint."). For the purpose of resolving the motion to dismiss under Rule 12(b)(6), the Court presumes all well-pled facts to be true and draws all reasonable inferences in favor of plaintiff. *See Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012). The AC offers several legal statements and conclusions. *See* AC ¶¶ 11–14, 21, 24. The Court has disregarded them. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

**1. 1978–2016: The Song, the 1978 Grant, and Later Transfers of Its Ownership Interests**

In 1978, Champlin, Foster, and Graydon co-wrote the song, “After the Love Has Gone” (the “Song”).<sup>2</sup> *Id.* ¶ 15. The Song’s copyright is registered with the U.S. Copyright Office. *Id.* As joint authors under the Copyright Act, each initially held a one-third interest in the Song. *Id.*

In 1978, to aid the Song’s release by the band Earth, Wind and Fire, the authors granted their interests to Bobette, Charleville, and Acme (the “1978 Grant”). *Id.* ¶ 16.

Important here, Champlin pleads that the grant of his one-third interest, which was to Bobette, was by him alone, and was independent of the contemporaneous grants by Foster and Graydon of their interests to Charleville and Acme. And, he pleads, his interest in the Song thereafter has been transferred separate and apart from the interest traceable to his co-authors. *Id.* Specifically, Champlin alleges that, pursuant to the 1978 Grant, Champlin transferred his full one-third interest to Bobette, which did not receive any interest in the Song from either Foster or Graydon. *Id.* Champlin’s interest later was subdivided and further transferred, such that, as of the date this suit was filed, Champlin’s one-third interest in the Song was held as follows: Wise Music held 20.67%; Noted held 7.49%; and New Music held another 5.17%. *Id.* ¶¶ 17–18. And, Champlin alleges, the later owners of his interest (Noted, New Music, and Wise Music) never held any interest in the Song other than those traceable to Champlin’s original interest. *Id.* ¶¶ 16–18.

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<sup>2</sup> The Song has alternatively been referred to as “After the Love Is Gone.” *See, e.g.*, Dkt. 20-5 at 1, 4 (termination notices, signed by Foster and Graydon, addressed to EMI and Sony, respectively, and identifying Song’s title as “‘After the Love Has Gone,’ (aka, ‘After the Love Is Gone’)”); Dkt. 20-6 (Champlin’s termination notice to Wise Music, New Music, and Noted; same).

As to Foster and Graydon's interests in the Song, these were transferred to Charleville and Acme in the 1978 Grant. *Id.* ¶ 16.<sup>3</sup> Sony, through EMI, later acquired a portion of Foster and Graydon's interest from Charleville and Acme. *Id.* ¶ 20. That interest amounted to 45% of the total interest in the Song. *Id.*

## **2. January 20, 2016: The Foster/Graydon Termination Notices**

On January 20, 2016, Foster and Graydon timely served a notice of termination, signed by both, on Sony, and another such notice on EMI (the "Foster/Graydon Notices"). *Id.* ¶ 22; *see* Dkt. 20-5 at 1, 4 (attaching Foster/Graydon Notices to instant motion to dismiss). The Foster/Graydon Notices specified an effective date of the termination of January 22, 2018. AC ¶ 22. On February 17, 2016, the Foster/Graydon Notices were duly recorded with the Copyright Office. *Id.* Sony/EMI relinquished to Foster and Graydon their combined 45% interest in the Song. *Id.* ¶ 23.

## **3. August 8, 2016: The Champlin Termination Notice and Wise Music's Refusal to Relinquish Its Interest or Royalties to Champlin**

On August 8, 2016, Champlin timely served on Wise Music, New Music, and Noted a notice of termination (the "Champlin Notice"), which he signed. It directed those entities to relinquish to him his original one-third interest, which he had granted to Bobette and thereafter had made its way to them. *Id.* ¶¶ 25–26; *see* Dkt. 20-6 (attaching Champlin Notice to instant motion to dismiss). The Champlin Notice specified August 15, 2022 as the effective date of the termination. AC ¶ 25. On August 8, 2016, the Champlin Notice was duly recorded with the Copyright Office. *Id.* New Music and Noted relinquished their ownership interests in the Song

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<sup>3</sup> The AC never explicitly states whether Charleville and Acme each received the interest of one and only one of these two authors, or if Charleville and Acme each received some combination of Graydon and Foster's joint interest. This factual issue does not bear on the Court's analysis resolving the instant motion to dismiss.

to Champlin. *Id.* ¶ 27. And New Music sent a letter to Wise Music, stating that New Music’s ownership interest in the Song had reverted to Champlin, and directing Wise Music henceforth to forward the royalties collected for New Music’s 5.17% interest to Nightworm, Champlin’s music company. *Id.* ¶ 28.

Wise Music, however, has refused to relinquish its interest in the Song to Champlin—despite “multiple written and oral communications with Champlin’s counsel.” *Id.* ¶ 30. Wise Music continues to license and collect royalties for both its 20.67% interest and the 5.17% interest relinquished by New Music. *Id.* ¶¶ 30–31.

### **B. Procedural Background**

On September 14, 2021, Champlin filed the original complaint. Dkt. 1. On November 23, 2021, he filed the AC. Dkt. 16. On November 30, 2021, the parties stipulated to a schedule for defendants to answer or otherwise respond to the AC. Dkt. 18. On December 13, 2021, defendants filed a motion to dismiss (“MTD”), and a memorandum of law, an affirmation, and exhibits in support, Dkt. 20. On February 14, 2022, Champlin filed a memorandum of law in opposition. Dkt. 24 (“Opp’n”). On March 7, 2022, defendants replied. Dkt. 28 (“Reply”). On May 6, 2022, defendants filed a supplemental letter alerting the Court to the decision in *Peretti v. Authentic Brands Grp., LLC*, No. 21-2174-cv, 2022 WL 1397767 (2d Cir. May 4, 2022), which defendants contend supports their MTD. Dkt. 29. On May 12, 2022, Champlin filed an opposing letter. Dkt. 30.

## **II. Discussion**

In moving to dismiss, defendants make separate arguments why the two termination notices—Champlin’s and Foster and Graydon’s—were ineffective as to Wise Music. The Champlin Notice was ineffective, they argue, because the three co-authors’ interests were conveyed in 1978 in a single, indivisible grant, and that under 17 U.S.C. § 203, any subsequent

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