UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ATTICUS LIMITED LIABILITY COMPANY,

Plaintiff,

-against-

THE DRAMATIC PUBLISHING COMPANY,

Defendant,

and

AARON SORKIN,

Involuntary Party/Nominal Defendant.

Case No.:

COMPLAINT

Plaintiff Atticus Limited Liability Company ("Atticus"), by and through its counsel Loeb & Loeb LLP, as and for its Complaint against Defendant Dramatic Publishing Company ("DPC") and Involuntary Party/Nominal Defendant Aaron Sorkin ("Sorkin"), alleges as follows:

NATURE OF THE ACTION

1. Atticus and Aaron Sorkin are, respectively, the production company and playwright responsible for the Broadway adaptation of *To Kill a Mockingbird*, one of the highest-grossing plays in Broadway history (the "Sorkin Play"), based on the Harper Lee novel that was recently voted in a *New York Times* survey to be the best book of the past 125 years and has for decades been required reading for virtually every student in the United States. This action arises out of DPC's erroneous claim that the acclaimed Aaron Sorkin adaptation cannot be staged by any regional, local or community theaters, colleges, high schools, churches, clubs or any other amateur groups anywhere in the United States, including performances via a planned non-Equity tour that will bring the Sorkin Play to theaters across the country.

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2. DPC's claim is based upon its copyright ownership to a prior stage adaptation of the novel written by its then-President Christopher Sergel (the "Sergel Play"), and a 1969 grant by Harper Lee that conferred DPC with exclusive rights to stage so-called "stock" and "amateur" productions of the novel. In April 2011, Ms. Lee, through her counsel, served a notice pursuant to the Copyright Act's termination provision (17 U.S.C. § 304(c)), unequivocally terminating DPC's exclusive rights to stage such productions as of April 2016, subject to DPC's continuing *non*exclusive rights to stage and license the Sergel Play. Thereafter, Ms. Lee granted a license to Atticus's predecessor-in-interest to create and present, among other types of performances, stock and amateur productions of a new adaptation of the novel—*i.e.*, the Sorkin Play.

3. Accordingly, amateur organizations in the United States are now able to obtain licenses for and stage productions of *both* the Sorkin Play and the Sergel Play. DPC contends otherwise, based on a reading of the Copyright Act's termination provision that defies all logic (and the English language), but that a single arbitrator in a separate proceeding has held to be reflective of Congress's intent: that *exclusive* grants of copyright interests are *interminable*. That is obviously wrong. *See* 17 U.S.C. § 304(c) ("the **exclusive** or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, … is subject to termination under the following conditions …"). Indeed, in the 40-plus years since authors' termination rights were enshrined in the Copyright Act of 1976, *no* court has ever held—or even implied—that an exclusive license lasts in perpetuity following a valid termination.

4. Whatever the effect of this erroneous ruling as between the actual parties to the arbitration—DPC and the Estate of Harper Lee—it has no relevance to Atticus or Sorkin, neither of whom were parties thereto, and both of whom acquired their rights to write and produce the Sorkin Play years before the erroneous ruling was issued. Pursuant to these rights, and by

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operation of U.S. copyright law, regional and community theaters, as well as countless high schools and colleges, have the ability to license and perform the Sorkin Play. DPC's position—based on a complete misreading of Copyright Act by a single arbitrator in a private arbitration—would deprive *all* of these entities of that opportunity, despite none of them having been parties to the arbitration either, and limit the pool of theatergoers able to enjoy the Sorkin Play to only those fortunate enough to see it on Broadway, the West End or in other so-called "first-class" productions.

5. DPC's position—that it continues to maintain "worldwide *exclusive* rights to all non-first-class theater or stage rights in *To Kill a Mockingbird*"[1] (emphasis added)—has necessitated this action, seeking declaratory judgment that Atticus and Sorkin have the right, along with DPC, to stage and license their respective adaptations of the cherished Harper Lee novel in regional and local theaters in the United States.

THE PARTIES

6. Plaintiff Atticus Limited Liability Company is a New York limited liability company with its principal place of business in New York, New York.

7. Upon information and belief, Defendant Dramatic Publishing Company is an Illinois corporation with its principal place of business in Woodstock, Illinois.

8. Involuntary Party/Nominal Defendant Aaron Sorkin is a natural person who, upon information and belief, resides in Los Angeles, California. By virtue of Sorkin's copyright ownership of the Sorkin Play, Sorkin is a necessary party to this action, and has been joined in this action pursuant to Fed. R. Civ. P. 19(a) following due request that he join this action as a plaintiff.

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[1] *See* https://www.dramaticpublishing.com/updated-to-kill-a-mockingbird-statement.

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JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this case arises under the Copyright Act, 17 U.S.C. § 101 *et seq*., and the declaratory relief sought herein requires an interpretation of the Copyright Act.

10. The Court has personal jurisdiction over DPC and Sorkin because, among other things, each of them may be found in New York, does systematic and continuous business in New York and/or has performed acts directed at New York which give rise to this action, including, without limitation, staging, licensing and/or attempting to stage or license the Sergel Play and the Sorkin Play, respectively, for production in New York.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 1400(a).

FACTUAL ALLEGATIONS

THE TERMINATION OF DPC'S EXCLUSIVE LICENSE PURSUANT TO THE COPYRIGHT ACT'S PLAIN TERMS

12. Since its publication in 1960, Harper Lee's *To Kill a Mockingbird* (the "Novel")—the winner of the Pulitzer Prize in 1961—has become one of the most cherished novels in American literature. So widely read and appreciated is the Novel that, in a December 2021 *New York Times* survey of its readers (https://www.nytimes.com/interactive/2021/12/28/books/best-book-winners.html), it was voted the "Best Book of the Past 125 Years" over other acclaimed novels such as J.R.R. Tolkien's *Fellowship of the Ring*, George Orwell's *1984*, and Toni Morrison's *Beloved*.

13. In 1969, Lee entered into an agreement with DPC (the "DPC Grant") granting DPC exclusive "amateur acting rights" in the Novel, defined in relevant part as "all performance rights for little theatres, community theatres and/or drama associations, colleges, universities, high school and other school groups, churches, clubs and other amateur organizations or groups therein or

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connected therewith, together with all stock, repertoire, lyceum and Chautauqua performances whether any or all of the abovementioned performances are given by paid and/or unpaid actors, but shall not include Broadway production rights nor first-class professional road and/or first-class touring production rights" (collectively, "Stock and Amateur Productions").

14. DPC subsequently commissioned the Sergel Play. In the decades since it was written, DPC has licensed the Sergel Play for Stock and Amateur Productions throughout the United States, including in theaters throughout New York.

15. In April 2011, Lee served a notice of termination on DPC pursuant to Section 304(c) of the Copyright Act, 17 U.S.C. § 304(c).

16. This provision of the Copyright Act confers authors and their heirs with the right to terminate any "exclusive or nonexclusive" copyright grant that, like the 1969 DPC Grant, was executed before 1978. An author's right of termination is absolute and inalienable, and "may be effected notwithstanding any agreement to the contrary." 17 U.S.C. § 304(c)(5). In other words, as courts in this and every other Circuit have explained, "the clear Congressional purpose behind § 304(c) was to prevent authors from waiving their termination right by contract." *Marvel Characters v. Simon*, 310 F.3d 280, 290 (2d Cir. 2002).

17. And, in light of its purpose to allow authors to recapture copyright ownership in their works, this termination right of course applies to any "transfer of copyright ownership," including exclusive licenses like the DPC Grant. *See* 17 U.S.C. § 101 ("A 'transfer of copyright ownership' is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.").

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