

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRADLEY RICHLIN; LANCE RICHLIN;
MARK MANNIS; ABIGAIL RICHLIN
SCHWARTZ,

Plaintiffs-Appellants,

LOUISE RICHLIN; ELYSSA PARTON;
MICHELLE FORKEL,

*Nominal Defendants and
Involuntary Plaintiffs-Appellants,*

v.

METRO-GOLDWYN-MAYER PICTURES,
INC.; GEOFFREY PRODUCTIONS, INC.,
Defendants-Appellees.

No. 06-55307

D.C. No.
CV-04-09162-DDP
OPINION

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted
October 15, 2007—Pasadena, California

Filed June 19, 2008

Before: Ferdinand F. Fernandez and Kim McLane Wardlaw,
Circuit Judges, and Raner C. Collins,* District Judge.

Opinion by Judge Wardlaw

*The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

COUNSEL

E. Randol Schoenberg, Laura A. Gibbons, Burris & Schoenberg, LLP, Los Angeles, California; Thomas A. Brackey, Freund & Brackey LLP, Beverly Hills, California, for the plaintiffs-appellants, and nominal defendants and involuntary plaintiffs-appellants.

Jonathan Zavin, Jacques M. Rimokh, Loeb & Loeb LLP, New York, New York; David Grossman, Loeb & Loeb LLP, Los Angeles, California, for the defendants-appellees.

OPINION

WARDLAW, Circuit Judge:

Inspector Jacques Clouseau, famously unable to crack the simplest of murder cases, would most certainly be confounded by the case we face. While Inspector Clouseau searched for the answer to the question, “Who did it?”, we must search for the answer to the question, “Who owns it?” In 1962, Maurice Richlin coauthored a story treatment (the “Treatment”)¹ involving the bumbling inspector. Later that year, before publication,² Richlin assigned all rights in the

¹According to expert witness Dr. Drew Casper of the University of Southern California’s School of Cinema-TV, a treatment is a “brief outline, in prose, describing the actions of a movie plot, indicating characters along the way with little or no dialogue; it will run no more than 25 pages, it is the last stage before beginning a screenplay proper and as such, functions as a source for a script.” The Treatment is a fourteen-page mixture of story and staging. For example, the Treatment reads: “Festival that night. Table with Princess, George, Sir Charles, Simone and the Inspector. Checking on car—facts about Le Pouf—Princess sees Secretary and excuses herself. Simone and George dance. George suggests a later rendezvous. He will find a way to get rid of her husband.”

²“Publication” is a term of art in the law of copyright. Publication before the effective date of the current Copyright Act divested an author

Treatment—including copyright and the right to renew that copyright—to a corporation that used it to create the smash-hit film, *The Pink Panther* (the “Motion Picture”). The Richlin heirs now claim federal statutory renewal rights in the Treatment and derivative works, including the Motion Picture. They assert that Richlin’s coauthorship of the Treatment makes him a coauthor of the Motion Picture. Alternatively, they contend that, because the Motion Picture secured statutory protection for the portions of the Treatment incorporated into the Motion Picture, and because the copyright in the Motion Picture was renewed for a second term, they are co-owners of the Motion Picture’s renewal copyright and all derivative works thereof. Although the Richlin heirs have developed several theories that could supply the answer to the question, “Who owns it?”, unlike Inspector Clouseau, they have not quite stumbled upon a theory that favors them. We therefore affirm the district court’s conclusion that the Richlin heirs have no interest in the copyright to the Motion Picture.

I. BACKGROUND

The material facts are largely undisputed. In April 1962, Maurice Richlin and Blake Edwards coauthored a fourteen-page Treatment initially entitled *The Pink Rajah*, but later renamed *The Pink Panther*. The Treatment served as the basis

of his common law copyright rights and injected the work into the public domain free for anyone to use. Publication in accordance with the statutory formalities of the 1909 Act, 17 U.S.C. § 10 (1909), however, both divested the owner of his common law copyright and invested him with federal statutory copyright protection. The rationale for this doctrine is rooted in the United States Constitution, which provides that “[t]he Congress shall have power . . . [t]o promote the progress of science and useful arts, by securing, for limited times to authors and inventors, the exclusive right to their respective writings and discoveries.” U.S. CONST. art. I, § 8, cl. 8. In exchange for securing the exclusive right to exploit his work that federal copyright accords, the author agrees that he will enjoy this monopoly for the limited duration Congress granted in the Copyright Acts, so that the public is the ultimate beneficiary. *See generally* 1 M. NIMMER & D. NIMMER, NIMMER ON COPYRIGHT §§ 4.01, 4.03 (2007).

for the well-known motion picture, *The Pink Panther*, and numerous derivative works. It appears that the Treatment set forth many of the plot elements and characters, including Inspector Clouseau himself, developed into the screenplay and incorporated into the Motion Picture.

Richlin and Edwards entered into an employment agreement dated May 14, 1962 (the “Employment Agreement”) with the Mirisch Corporation of Delaware (“Mirisch”) to write the screenplay for the Motion Picture.³ They agreed to create the screenplay as a “work made for hire.” Under this contract, Richlin and Edwards combined received \$150,000 for their work on the Treatment and the screenplay.⁴

Later that month, on May 24, 1962, Richlin and Edwards executed a literary assignment agreement (the “Assignment”) whereby they transferred and assigned “forever . . . that certain story (which term shall cover all literary material written by [Richlin and Edwards] in connection therewith including any adaptations, treatments, scenarios, dialogue, scripts and/or screenplays) entitled: ‘Pink Rajah’ also entitled or known as ‘Pink Panther’ ” in exchange for \$1 “and other good and valuable consideration in hand” paid by Mirisch. Mirisch also received “the right to use [Richlin’s and Edwards’s] name[s] as the author of the literary composition upon which said adaptations, or any of them, are based.” The Assignment further provided that if Mirisch copyrighted the Treatment, Mirisch “shall enjoy its rights hereunder for the full duration of such copyright or copyrights, including any and all renewals thereof.”⁵

³The Richlin heirs contend that the Employment Agreement was executed on June 12, 1962. The precise date of the contract’s execution does not affect our holding.

⁴A letter dated June 28, 1962, confirmed that “the \$150,000 payment for property [the Treatment] and screenplay is divided \$50,000 for property and \$100,000 for screenplay.”

⁵Although Richlin assigned to Mirisch all rights in the unpublished Treatment, an assignment of a statutory renewal copyright, assuming the

In 1963, *The Pink Panther* was released and distributed in theaters to great acclaim. It was followed by nine movie sequels,⁶ many of which gave screen credit to Richlin and Edwards for creating the characters. The original Motion Picture bears a copyright notice of 1963 in the name of Mirisch and G&E Productions. In 1964, the U.S. Copyright Office issued a certificate of registration for the “motion picture” entitled “The Pink Panther” under the Copyright Act of 1909 (“1909 Act”).

The Certificate of Registration identifies the claimant and author as “Mirisch-G&E Productions.” The certificate lists the date of publication as March 18, 1964, but notes that the copyright notice on the Motion Picture bears a date of 1963. The Richlin heirs concede that neither the Treatment nor the screenplay was ever separately published or registered for federal copyright protection.

Richlin died on November 13, 1990. The original term of copyright in the Motion Picture—twenty-eight years from the first date of publication—was set to expire in 1991,⁷ but it was

Treatment became the subject of statutory copyright, would not become effective unless the author/assignor lives to the commencement of the renewal term, which is when the renewal interest vests in the author. *See Stewart v. Abend*, 495 U.S. 207, 220 (1990) (“[I]f the author dies before the commencement of the renewal period, the assignee holds nothing.” (citing *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373, 377 (1960) (“Section 24 [of the 1909 Act] reflects, it seems to us, a consistent policy to treat renewal rights as expectancies until the renewal period arrives.”))). The Richlin heirs’ claim is based on Richlin’s predeceasing the vesting of the renewal interest provided by statutory copyright.

⁶*A Shot in the Dark* (1964); *Inspector Clouseau* (1968); *The Return of the Pink Panther* (1975); *The Pink Panther Strikes Again* (1976); *Revenge of the Pink Panther* (1978); *Trail of the Pink Panther* (1982); *Curse of the Pink Panther* (1983); *Son of the Pink Panther* (1993); and *The Pink Panther* (2006).

⁷Under the 1909 Act, as amended, federal copyright protection was secured “by publication thereof with the notice of copyright required by [§ 19] of this title.” 17 U.S.C. § 10 (1909). There is no dispute that the Motion Picture was released and distributed with proper notice in 1963,

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