

21-2174-cv

Peretti v. Authentic Brands Group, LLC

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2021

Argued: April 8, 2022 Decided: May 4, 2022

Docket No. 21-2174-cv

VALENTINA M. PERETTI ACUTI, PAUL J. REITNAUER, III,

Plaintiffs-Appellants,

— v. —

AUTHENTIC BRANDS GROUP LLC, ABG EPE IP, LLC,

Defendants-Appellees.

Before:

LIVINGSTON, *Chief Judge*, LYNCH and LOHIER, *Circuit Judges.*

Appellants Valentina M. Peretti Acuti and Paul J. Reitnauer, III, heirs to the late songwriter and record producer Hugo Peretti, appeal from an order of the United States District Court for the Southern District of New York (Buchwald, J.) dismissing Appellants' action, which sought a declaratory judgment that

Appellants had validly terminated a 1983 grant of rights in the copyright to the hit song “Can’t Help Falling In Love.” The district court dismissed the action, holding that the grant, which transferred rights and interests held by the Peretti family in the renewal term of the copyright to Appellees’ predecessors-in-interest, was not a grant “executed by the author” under § 203 of the Copyright Act of 1976 and therefore that Appellants had no statutory right to terminate the grant.

We agree with the district court. The termination rights in § 203 of the Copyright Act of 1976 apply only to grants executed by the author. While Hugo Peretti’s signature is affixed to the grant document at issue, the interests at issue are the contingent rights held and transferred to the Appellees’ predecessors-in-interest by Peretti’s spouse and children, the grant of which was not and cannot be executed by the author. We therefore AFFIRM the judgment of the district court.

ROBERT W. CLARIDA, Reitler Kailas & Rosenblatt LLP,
New York, NY, *for Plaintiffs-Appellants.*

PETER ANDERSON (Adam I. Rich, Amanda Levine,
on the brief), Davis Wright Tremaine LLP,
Los Angeles, CA, New York, NY,
for Defendants-Appellees.

GERARD E. LYNCH, *Circuit Judge:*

This appeal concerns a dispute over the ownership of rights in the copyright of “Can’t Help Falling In Love” (the “Composition”), a well-known ballad written by Hugo Peretti, Luigi Creatore, and George Weiss, and popularized by Elvis Presley, in 1961. Plaintiffs-Appellants Valentina M. Peretti

Acuti and Paul J. Reitnauer, III (together, the “Perettis”), the surviving statutory successors to the late Hugo Peretti, brought this action for declaratory relief against Defendants-Appellees Authentic Brands Group, LLC and ABG EPE IP LLC (together, “Authentic Brands”), successors-in-interest to the parties to whom the Peretti family assigned their interests in the renewal term of the copyright to the Composition in 1983. They now appeal from an August 13, 2021 order of the United States District Court for the Southern District of New York (Naomi Reice Buchwald, *J.*) dismissing their claims.

The Composition was initially created, published, and registered as a copyright in 1961. In 1983, several years after the passage of the Copyright Act of 1976, Hugo Peretti, his wife, and his daughters signed a contract transferring their contingent rights and interests in the renewal term of the copyright of the Composition to Appellees’ predecessors-in-interest (the “1983 Assignment”). Hugo Peretti died before those renewal rights vested, and his widow and daughters ultimately registered the renewal of the copyright in 1989. In 2014, Appellant Valentina Peretti Acuti, one of Hugo Peretti’s daughters, and the late June Peretti, Hugo’s widow, served a Notice of Termination on Authentic Brands purporting to terminate the 1983 Assignment under 17 U.S.C. § 203, which

provides a limited right to terminate such grants executed after 1978 by the author of a work. Authentic Brands disputed the effectiveness of the termination, and the Perettis, now the sole surviving statutory heirs of Hugo Peretti, filed suit in the Southern District of New York seeking a declaratory judgment that the termination was properly effectuated. The district court dismissed the claim, holding that the Perettis had no right to terminate the 1983 Assignment under § 203 because the 1983 Assignment was not a grant “executed by the author.” The Perettis now appeal, arguing that the district court misinterpreted the text of § 203 and misapplied it in dismissing their suit for failure to state a claim.

We agree with the district court. Section 203 of the Copyright Act of 1976 applies only to grants “executed by the author on or after January 1, 1978.” 17 U.S.C. § 203(a). An execution of a transfer of copyright ownership “is not valid unless an instrument of conveyance . . . is in writing and signed by the owner of the rights conveyed.” *Id.* § 204(a). While Hugo Peretti’s signature graces the 1983 Assignment, he cannot have executed a grant transferring rights, such as those owned by his family members, that he did not hold. Rather, his signature on the grant document transfers only his own contingent right to the renewal term, while his wife’s and daughters’ signatures transferred their respective contingent

rights. Because Hugo Peretti died before his contingent right vested, the rights transferred to Authentic Brands' predecessors-in-interest were the contingent rights held by his wife and daughters. We therefore conclude that the grants made by Hugo's wife and daughters in the 1983 Assignment are not grants "executed by the author" merely because Hugo Peretti's signature is found on the same grant document, and thus are not terminable under § 203. Accordingly, we AFFIRM the judgment of the district court.

BACKGROUND¹

In 1961, Hugo Peretti, along with co-composers Luigi Creatore and George Weiss, co-authored the Composition. Peretti and his co-authors registered the copyright to the Composition with the U.S. Copyright Office as an unpublished work on January 16, 1961 under Reg. No. EU 654415. A recording of the Composition, performed by Elvis Presley, was released on October 1, 1961 and quickly became a chart-topping hit. Peretti and his co-authors registered the

¹ The facts set forth below are drawn from the Complaint. For the purpose of a motion to dismiss, this court assumes all facts alleged in the Complaint to be true and draws all reasonable inferences in favor of the plaintiff. *See Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012).

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