

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

* * * * * X
 JESSICA M. HILL, *
 *
 Plaintiff, *
 *
 -against- *
 *
 SAM H. HARRIS, SAM H. HARRIS *
 THEATRICAL ENTERPRISES, INC., *
 IRVING BERLIN and MOSS HART, *
 *
 Defendants. *
 *
 * * * * * X

The defendants herein (except Moss Hart who has not appeared) will move upon the trial of this action to dismiss the amended complaint for failure to state facts sufficient to constitute a cause of action.

The Complaint

The essential allegations of the complaint are:

That defendants produced a musical entertainment known as "As Thousands Cheer";

That prior to October 13th, 1893, Mildred J. Hill and Patty S. Hill wrote an original musical composition entitled "Good Morning To All" (Par. 6);

That on or about the 13th day of October, 1893, Clayton F. Summy duly copyrighted said composition by

publishing the same in a volume entitled "Song Stories for the Kindergarten", with notice of copyright (Par.7);

That on the 3rd day of September, 1921, a renewal or extension of the said period of copyright was made by Jessica M. Hill, and that Jessica M. Hill is now the owner of said copyright (Par.12);

That the musical entertainment known as "As Thousands Cheer" infringed upon the composition "Good Morning To All" by including the said composition in the said play or entertainment (Par.15).

First Objection

The complaint as above set forth states that Mildred J. Hill and Patty S. Hill wrote the composition "Good Morning To All" and that Clayton F. Summy duly copyrighted it (Par.6-7). Nowhere is there any allegation as to why or by what right Clayton F. Summy copyrighted the composition written by Mildred J. Hill and Patty S. Hill.

Second Objection

The complaint states that Clayton F. Summy copyrighted the composition on or about the 13th day of October, 1893, by publishing it in a volume entitled "Song Stories for the Kindergarten" and offering the same for sale. The only allegation that bears upon renewal is to the effect "that on or about the 3rd day of September, 1921, a renewal registration for the copyright #45997 was made with the

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Register of Copyrights, Washington, D.C. by Jessica M. Hill under #-19043, and that Jessica M. Hill is now the owner of said copyright". There is no fact alleged to show by what right Jessica M. Hill could extend the copyright term or apply for a renewal. The relationship between Jessica M. Hill and Mildred J. Hill and Patty S. Hill is not stated.

Third Objection

The complaint shows that Clayton F. Summy published the composition in question as part of a volume of songs. Under the Copyright Statute, a composite work can only be copyrighted by the copyright proprietor, not by the author.

Authority

To make out a proper complaint, a plaintiff must plead facts to show how the plaintiff had a right to copyright. The right to copyright for the original period is confined exclusively to the author or proprietor (Section 8, Copyright Law). There is no allegation in the complaint that Summy is the proprietor of the composition in question.

Fox Film v. Knowles, 275 Fed. 582;

Danks v. Gordon, 272 Fed. 821, at 824.

There is no allegation in the complaint that Mildred or Patty Hill has died. As a matter of law,

an extension of the copyright period on a composite work must be secured by the proprietor (Section 24, Copyright Law).

"Composite work means those consisting of matter drawn from various sources or contributed by different authors."

Weil on Copyright, page 178.

For authorities that the copyright on a composite work must be extended by the proprietor, see

Harris v. Coco-Cola Co., 1 Fed. Supp. 713;

Harris v. Coco-Cola Co., 73 Fed. (2d) 370, at 371;

White-Smith Music Publishing Co. v. Goff, 187 Fed. 247.

The motion should be granted.

Respectfully submitted,

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Attorneys for Sam H. Harris,
Sam H. Harris Theatrical
Enterprises, Inc. and Irving
Berlin.

ARTHUR F. DRISCOLL,
Of Counsel.

In SILVERMAN vs SUNRISE PICTURES CORPORATION,
(C.C.A., Second Circuit, 1921) 273 Fed. 909, 914. "Reason-
ing ab inconvenienti is not legally cogent; but remembering
that we must construe this statute 'with a view to effecting
the purposes intended by Congress,' and not so 'narrowly ***
as to deprive those entitled to their benefit of the rights
Congress intended to grant' (Bobbs-Merrill v. Straus, supra,
210 U.S. at page 346, 28 Sup. Ct. at page 724 [52 L. Ed.
1086]), we may point out that only by treating the act of a
fraction of the next of kin as a class act can injustice be
prevented. Next of kin are often numerous, as here; widely
separated geographically, as here; some may be in parts un-
known; yet defendant's argument, pressed to its logical result,
means that, if one owner of a microscopic fraction of right
cannot be found or can be bought, so that he cannot or will
not sign the renewal application, the rest of the family are
helpless. The same result would flow from the malicious or
purchased act of one child in a numerous family. Assuredly
the Legislature never intended such injustice.

"It is therefore held that the two sisters, who as
next of kin registered the renewal, were lawfully authorized
so to do for themselves and their fellow owners in common,
their act was in law the act of all, and plaintiff, having
derived title from all, is the owner of a lawful renewal
copyright."