

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)
)
Distribution of)
Cable Royalty Funds)
)
In the Matter of)
)
Distribution of)
Satellite Royalty Funds)

CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-2013)

**WORLDWIDE SUBSIDY GROUP LLC
MOTION FOR SUBSTITUTION OF PARTIES**

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Worldwide Subsidy Group LLC dba Multigroup Claimants (“WSG”) moves pursuant to 37 C.F.R. § 360.4(c) to substitute itself as a participant in this proceeding, in lieu of Multigroup Claimants, a sole proprietorship of Alfred Galaz (“Multigroup Claimants”). WSG brings this motion in accordance with the Judges’ *Order on Order to Show Cause*, issued on June 12, 2020.

FACTS

WSG is a Texas limited liability company. Multigroup Claimants was a sole proprietorship of Alfred Galaz. As set forth in prior briefing, on December 31, 2017, Alfred Galaz and Ruth Galaz collectively transferred 100% of the ownership in WSG to Ryan Galaz. Almost simultaneously, on January 1, 2018, Alfred Galaz transferred 100% of the interests held by Multigroup Claimants to Ryan Galaz. Consequently, as of January 1, 2018, there was a comprehensive commonality of ownership by Ryan Galaz of all interests held by WSG and Multigroup Claimants. Decl. of Ryan Galaz.

Because the near-simultaneous conveyances created a commonality of interest and ownership, and because Multigroup Claimants had always been engaged in the pursuit of the same type royalties as WSG, on behalf of the same copyright claimants and only pursuant to rights acquired from WSG, Ryan Galaz concluded that there was no longer a reason to conduct the business of WSG and Multigroup Claimants separately. Therefore, upon his acquisition, Ryan Galaz transferred those rights and interests previously held by Multigroup Claimants back to WSG (which rights had themselves originally been transferred to Multigroup Claimants *from* WSG).¹ Decl. of Ryan Galaz.

¹ For purposes of clarification, WSG’s business activities are (and always have been) broader than that of Multigroup Claimants. While WSG acquires and prosecutes ancillary royalty rights

As a result, following the transfers of December 31, 2017 and January 1, 2018, that are referenced above, all the rights and interests of WSG, and those previously held by Multigroup Claimants, have been held exclusively by WSG, which is wholly owned by Ryan Galaz. WSG's continued use of "Multigroup Claimants" as a fictitious business name, no different than WSG's use of "Independent Producers Group" and "Spanish Language Producers" as fictitious business names, was for no reason other than the demarcation and identification of the different rights pools being pursued (or intended to be pursued) by WSG. Decl. of Ryan Galaz.

WSG has previously characterized this as a "merging" of all interests into WSG. This merging was not by "operation of law", nor did WSG ever suggest it to be. Rather, it was a "merging" according to the personal election of Ryan Galaz. Ryan Galaz did not memorialize his placement of Multigroup Claimants' interests into WSG, i.e., his "transfer" of Multigroup Claimants' interests back to WSG, nor did he need to do so for his own personal accounting purposes. Rather, it was a "transfer" that occurred within the "four corners of Ryan Galaz's mind" that had no consequence on either WSG's or Multigroup Claimants' contractual obligations, and was never considered to be of any significant legal consequence.² Nonetheless, it is a "transfer" of interests, "out of one pocket, and into the other", which Ryan Galaz herein affirms. Decl. of Ryan Galaz.

on a worldwide basis, Multigroup Claimants' activities were (and always had been) limited to the collection of cable/satellite retransmission royalties in the United States.

² In fact, prior evidence submitted in response to the Judges' *Order to Show Cause* confirmed that Alfred Galaz never obtained a federal Employer Identification Number for "Multigroup Claimants", nor was "Multigroup Claimants" separately identified by Alfred Galaz on his tax returns.

ARGUMENT

A. The Judges' legal and factual rulings in this proceeding require acceptance of WSG's motion for substitution of parties.

Most if not all of the legal and factual issues for which the Judges solicit comment pursuant to their *Order on Order to Show Cause* have already been determined by the Judges in a prior ruling in this proceeding. See generally, *Ruling and Order Regarding Objections to Cable and Satellite Claims* (Oct. 23, 2017). Multigroup Claimants initially petitioned to participate in this proceeding as the assignee of interests held by WSG, as none of the copyright claimants represented by Multigroup Claimants were represented pursuant to agreements entered into directly with Multigroup Claimants. *Id.* at 2, 13-16 (Oct. 23, 2017). Rather, the underlying copyright claimants were represented pursuant to agreements entered into with WSG, of which the obligations and benefits of WSG for the collection, *inter alia*, of 2010-2013 cable/satellite royalties, had been subsequently assigned by WSG to Multigroup Claimants. *Id.*

Each of the agreements between the represented copyright claimants and WSG expressly apply California law. *Id.* California law provides that, absent certain defined circumstances that do not apply here, the obligations and benefits under any contract are freely assignable in the absence of any prohibition thereof in such agreement. See discussion, *infra*. None of the agreements between represented copyright claimants and WSG prohibited WSG's assignment of its interests, with a single exception that is now moot.³ *Id.* Consequently, the Judges previously

³ The sole exception was WSG's agreement with Azteca International Corporation ("AIC"), which required AIC to consent to any assignment of rights from WSG. *Ruling and Order Regarding Objections to Cable and Satellite Claims*, at 15 (Oct. 23, 2017). AIC subsequently agreed to a transfer of WSG's contractual interests to Spanish Language Producers, and then Spanish Language Producers' contractual interests to Multigroup Claimants (after efforts to create a separate Spanish-language category were abandoned). Consequently, the subsequent transfer of Multigroup Claimants' interests back to WSG (the original contracting entity) would

found that WSG’s assignment to Multigroup Claimants of its rights of representation in this proceeding was valid and not subject to challenge. *Id.* at 13-16 (“The Judges find that MPAA’s evidence and arguments do not support a general rule requiring consent from each of [WSG’s] claimants in order to represent them in these proceedings.”)

In fact, previously in this proceeding, Multigroup Claimants successfully presented legal authority to the Judges demonstrating that the obligations and benefits of WSG under its agreements are freely assignable. See *Ruling and Order Regarding Objections to Cable and Satellite Claims*, at 14 (Oct. 23, 2017) (citing Cal. Civ. Code § 955.1). As noted by the Judges in their ruling, Multigroup Claimants directed the Judges to the provision of the California Civil Code that sets forth the required elements for a transfer of general intangibles, of which consent of the obligor is not identified.⁴ *Id.* Moreover, Multigroup Claimants observed in its briefing

be of no consequence and would require no additional consent. Regardless, none of the royalties ordered for distribution in this proceeding were appropriated to AIC because the Judges already dismissed *all* claims for the programming of AIC (*Id.* at 40, 49), thereby rendering as moot the issue of whether an assignment of AIC representation was authorized.

4 Additional statutory and case authority exists for this hornbook law concept: “A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.” Cal. Civ. Code § 1458. “Property of any kind may be transferred, except as otherwise provided by this Article.” Cal. Civ. Code § 1044. Per rulings of the California Supreme Court:

“In fact, in California, without reference to the statutory enactments, this court, in *Rued v. Cooper*, 109 Cal. 682, 693, approved language as follows, based upon a consideration of the English and American cases then in existence: 'Assignability of things in action is now the rule; non-assignability, the exception; and this exception is confined to wrongs done to the person, the reputation, or the feelings of the injured party, and to contracts of a purely personal nature, like promises of marriage.' We have no doubt that under the above general doctrine alone, the cause of action in question must be held assignable and to have survived.”

Wikstrom v. Yolo Fliers Club, 206 Cal. 461, 464 (1929).

“The statutes in this state clearly manifest a policy in favor of the free transferability of all types of property, including rights under contracts. (Civ. Code, §§ 954, 1044, 1458.)

that the agreements between the copyright claimants and WSG cover worldwide royalty collection, it has been WSG's open practice to engage third parties to collect royalties outside the United States, and that no WSG-represented claimant has ever objected. *Id.* That assertion remains accurate. Finally, and while not mentioned by the Judges in their ruling, Multigroup Claimants had observed that the Judges had refrained from imposing any condition of "underlying claimant approval" on the MPAA, even though the *overwhelming* majority of the MPAA's program claims are derived through agents (see generally, *Multigroup Claimants' Motion to Strike Claims of the MPAA* (Oct. 10, 2016), nor had the Judges even required that the MPAA produce in discovery the contracts between the underlying copyright owners and their agents, or even produce correspondence from the underlying copyright owners confirming their entitlement to retransmission royalties attributable to MPAA-claimed programs. *Multigroup Claimants' Opposition to MPAA Motion for Disallowance of Claims Made by Multigroup Claimants* at 47 (Oct. 31, 2016).

As such, the issue presented by the Judges is whether Multigroup Claimants can now assign *back* to WSG the same rights that WSG previously assigned to Multigroup Claimants. Relying on the identical factual and legal rulings made by the Judges in the *Ruling and Order Regarding Objections to Cable and Satellite Claims* (Oct. 23, 2017), no different outcome may

The terms and purpose of a contract may show however, that it was intended to be nonassignable. Thus the duties imposed upon one party may be of such a personal nature that their performance by someone else would in effect deprive the other party of that for which he bargained. The duties in such a situation cannot be delegated. (See *La Rue v. Groezinger*, 84 Cal. 281, 283-285. Rights likewise cannot be assigned if the assignment would materially impair the nonassigning party's chance of obtaining the performance he expected. (*citing* 2 Williston, Contracts, 1177-1182 (rev. ed. 1936); 1 Rest., Contracts, § 151 (1932).)”)

Farmland Irrigation Co., Inc. v. Dopplmaier, 48 Cal. 2d 208, 222 (1957). *See also*, *Royal Bank Export Fin. v. Bestways Distributing* 229 Cal. App. 3d 764, 767 (1991).

result than occurred therein. Furthermore, no equitable reason exists to prohibit such a transfer. During the pendency of this proceeding between the January 1, 2018 transfer of ownership of Multigroup Claimants' interests and the final distribution orders occurring in August and November of 2018,⁵ the interests of the underlying copyright claimants were represented by the same personnel, expert witnesses, and legal counsel, without qualification. Further, the assignment was to the contracting entity whom had been originally authorized to collect the represented claimants' interests. That is, even if the copyright claimants had a theoretical legal basis to object to any transfer, any theoretical argument was obviated by the very terms of agreement with WSG.

B. Denying WSG's motion would be tantamount to an unreasonable restraint on the alienation of rights.

An even more obvious reason compels the grant of WSG's motion. Multigroup Claimants was a fictitious business name of Alfred Galaz, an individual. For Alfred Galaz to convey the interests of Multigroup Claimants, i.e., a conveyance of *his* personal interests, it necessitated that such interests vest with a different person or legal entity. As such, denial of WSG's motion would be tantamount to the Judges prohibiting Alfred Galaz from conveying his personal interest, or risk injury to the rights being prosecuted.

As noted, no contractual or equitable basis exists to impose such a prohibition of assignment, and no legal authority compels that the copyright claimants' rights being represented be prosecuted exclusively by Alfred Galaz. In fact, the California authority cited above

⁵ See *Final Distribution Determination*, 83 Fed. Reg. 38,326 (Aug. 6, 2018) regarding distribution of devotional category royalties; see *Final Distribution Determination*, 83 Fed. Reg. 61,683 (Nov. 30, 2018) regarding distribution of program suppliers category royalties.

mandates that such rights may be assigned. Moreover, the provision under which this motion is premised, 37 C.F.R. § 360.4(c), states in pertinent part:

“... If the good faith efforts of the Copyright Royalty Board to contact the copyright owner or filer are frustrated because of outdated or otherwise inaccurate contact information, the claim may be subject to dismissal. . . .”

37 C.F.R. § 360.4(c).

Such provision makes clear that the purpose of such provision is not to summarily dismiss a claim if the “legal name and/or address of the copyright owner entitled to royalties or the person or entity filing the claim changes”, but to address those changes, and seek to have the filer (of the July claim) amend their claim in order to avoid “frustrating” contact with such claimant. Obviously, no issue has ever existed with “contacting” the representative of the interests being prosecuted, which has been represented by the undersigned legal counsel at all times and, consequently, prohibiting Alfred Galaz’s transfer of his interests, at risk of injuring the very interests being conveyed, would *per se* constitute an unreasonable restraint on alienation.

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CONCLUSION

For the reasons set forth herein, Worldwide Subsidy Group LLC hereby requests that the Judges formally substitute Worldwide Subsidy Group LLC dba Multigroup Claimants in the stead of Multigroup Claimants, a sole proprietorship of Alfred Galaz, in this proceeding.

Respectfully submitted,

June 22, 2020

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CERTIFICATE OF SERVICE

I certify that on June 22, 2020, I caused a copy of the foregoing pleading to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

_____/s/_____
Brian D. Boydston, Esq.

Proof of Delivery

I hereby certify that on Monday, June 22, 2020, I provided a true and correct copy of the Worldwide Subsidy Group Llc Motion For Substitution Of Parties to the following:

Settling Devotional Claimants (SDC), represented by Matthew J MacLean, served via ESERVICE at matthew.maclean@pillsburylaw.com

Public Television Claimants (PTC), represented by Ronald G. Dove Jr., served via ESERVICE at rdove@cov.com

Canadian Claimants Group, represented by Lawrence K Satterfield, served via ESERVICE at lksatterfield@satterfield-pllc.com

MPA-Represented Program Suppliers (MPA), represented by Gregory O Olaniran, served via ESERVICE at goo@msk.com

Joint Sports Claimants (JSC), represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@apks.com

National Association of Broadcasters (NAB) aka CTV, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

Signed: /s/ Brian D Boydston