

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF CABLE
ROYALTY FUNDS**

**CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-13)**

**DISTRIBUTION OF SATELLITE
ROYALTY FUNDS**

**SETTLING DEVOTIONAL CLAIMANTS' OPPOSITION TO
WORLDWIDE SUBSIDY GROUP LLC'S MOTION FOR SUBSTITUTION
OF PARTIES**

The Settling Devotional Claimants (“SDC”) oppose Worldwide Subsidy Group, LLC’s (“WSG”) Motion for Substitution of Parties (“WSG Motion”).

I. INTRODUCTION

In the Order on the Order to Show Cause (“Order”) the Judges determined not to debar WSG from participating in the proceeding. But because the record was inconclusive as to who was participating as the claimants’ agent, “Multigroup Claimants,” and whether that person or entity had authority to represent copyright owners, the Judges granted WSG leave to file a motion for substitution of parties and to establish on the basis of “documentary evidence and/or compelling legal argument (with citation to legal authority)” that it had authority to represent the claimants. Order at 15. WSG has moved for substitution of parties, but it has failed to establish that it has authority to represent the claimants. Even if Alfred Galaz conveyed his contracts for representation of the claimants of Multigroup Claimants to Ryan Galaz “[e]ffective January 1, 2018,” and even if an unwritten intent “within the four corners of Ryan Galaz’s mind” (WSG Motion at 3) constituted a legally effective form of conveyance of a contractual right to WSG,

WSG has failed to provide evidence that the claimants have consented to the assignment of the agency agreements, as required by California law. Except in certain circumstances not present here, California law prohibits the assignment of an agency agreement without the principal's consent. Cal. Civ. Code § 2349. WSG cannot establish its authority without proof that the represented claimants have consented first to the transfer from Alfred Galaz to Ryan Galaz and then from Ryan Galaz to WSG.

II. California Law Required Alfred Galaz, Ryan Galaz, and WSG Obtain Consent of the Copyright Owners to the Transfers, which They Failed to Do

WSG and the SDC agree that California law controls the assignment of the agency agreements. Under California Civil Code Sec. 2349, controlling law that WSG fails to discuss, the ability of an agent to assign his authority to represent a principal is circumscribed:

Section 2349. AGENT'S DELEGATION OF HIS POWERS. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, *and in no others*:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the sub-agent can lawfully perform;
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal.

Cal. Civ. Code § 2349 (emphasis added).

This statutory restriction on the assignability of an agent's authority applies to any delegation of an agent's authority, except as expressly provided for in the law. The restriction has been held, for example, to preclude an agent's ability to assign the right to collect a claim, absent authorization from the principal. In the venerable case of *Dingley v. McDonald*, 57 P. 574 (Cal. 1899), whose facts are analogous to the instant matter, the California Supreme Court

rejected the authority of the assignee of an agent for collection to pursue litigation on behalf of the agent's principal:

[The authorized agent for collection] undertook to delegate his authority to plaintiff by assigning the claim to him. ... It is not, and cannot be, contended that [the agent] was specially authorized to delegate his authority; nor can we regard the act to be done by the plaintiff as 'purely mechanical.' ... No usage was shown for agents to assign claims for collection, and we cannot assume that any such usage exists in San Francisco, where the suit was brought. ...

The general power given [to the authorized agent] was based upon the special trust and confidence reposed in his personal ability and integrity, and the rule is that such power, in the absence of authority, express or implied, cannot be redelegated by the agent so as to bind the principal. ...

[A]ssuming that [the agent] had plenary power to collect the demand, we do not think he could transfer it to a third person, and thus invest a stranger to the [principal] with the title and control.

Dingley, 57 P. at 576-77; see also *Navigators Specialty Ins. Co. v. St. Paul Surplus Lines Ins. Co.*, No. 13-cv-03499-SC, 2015 WL 4148319, at *2-3 (N.D. Cal. July 9, 2015) (insurance company's agent was not authorized under Cal. Civ. Code § 2349 to delegate powers to subagent); *Wood River Capital Resources, LLC v. Stewart Title Guaranty Company*, No. A131736, 2013 WL 637903, at *6 (Cal. App., 1st Div. Feb. 21, 2013) ("An agent cannot lawfully delegate its powers to a subagent unless one or more of the conditions in Civil Code section 2349 is satisfied. An unauthorized subagent owes no duties to the principal."). WSG has not addressed Section 2349, nor the *Dingley* precedent. Indeed, none of the authorities cited by WSG even addresses the assignability of an agency agreement without the knowledge or approval of the principal.

Moreover, none of the exceptions in Cal. Civ. Code § 2349 applies to the purported assignment sought by WSG. First, Section 2349 allows delegation "when the act to be done is purely mechanical." Mechanical acts, like the authorized signing of an instrument on behalf of

the agent or principal, as an example, are acts that do not entail discretion. *Dingley*, 57 P. at 576-77 (pursuit of collection of claims involves discretion, and is not a “mechanical act”); *see also Kadota Fig Ass'n of Producers v. Case-Swayne Co.*, 73 Cal. App. 2d 815, 820, 167 P.2d 523, 526 (1946) (finding that delegation of authority merely to sign an instrument was a “mechanical act” involving no exercise of discretion); *Guerrero v. Gomez*, No. F068753, 2015 WL 7874228, at *6 (Cal. Ct. App. Dec. 4, 2015) (delegation of a discretionary power of attorney to transfer real estate was not delegation of a merely mechanical act). Neither prosecuting copyright royalty claims before the Copyright Royalty Board nor settling claims in a contested proceeding, both of which involve numerous exercises of discretion, can be deemed a “purely mechanical” act. *Dingley*, 57 P. at 576.

Second, WSG makes no argument that the assignment is necessitated because Alfred Galaz is unable to perform his responsibilities, which Ryan Galaz can now perform. The very fact that WSG sought to withhold Ryan Galaz’s identity, which absent the SDC’s motion to de-designate would have remain obscured to the public (and, presumably, the claimants), directly challenges any suggestion that the assignment is predicated on Alfred Galaz’s infirmity in the performance of representation of copyright claimants in preference for a qualified replacement.

Third, § 2349 allows delegation “when it is the usage of the place to delegate such powers.” To the SDC’s knowledge, the assignment of an agency agreement without the express consent of the claimants is unprecedented in copyright royalty proceedings. Indeed, the Judges’ order requiring WSG to establish by “documentary evidence and/or compelling legal authority” underscores that it is not “the usage of the place” for an agent to delegate powers to participate in copyright royalty proceedings without knowledge and consent of the claimants. In the absence of evidence, the Judges “cannot assume that any such usage exists” *Id.* at 576-77.

The last exception, when “the delegation is specially authorized by the principal,” is clearly absent here. None of the agreements between MGC and the claimants addresses assignment of Alfred Galaz’s agency, and while the Judges’ order for “documentary evidence” clearly invited proof that the claimants authorized the assignment, WSG decision to keep the assignment secret from the claimants underscores its failure to comply with California law.

In short, California law is clear that Alfred Galaz’s authority to collect on behalf of the claimants he represented could not be assigned to Ryan Galaz without those claimants’ consent, nor could any authority held by Ryan Galaz be assigned to WSG without such consent. Whatever can be said about the claimants’ “special trust and confidence” in the “personal ability and integrity” of Alfred Galaz (*id.* at 576), there is no showing that any such trust and authority extends to Ryan Galaz. Failing to satisfy this requirement of California law, no valid assignment of authority has occurred.

III. CRB Precedent Does Not Authorize the WSG Substitution of Parties

In addition to California law, WSG argues that the 2010-2013 Ruling and Order Regarding Objections to Cable and Satellite Claims (Oct. 23, 2017) provides responsive legal authority and that “no different outcome may result than occurred therein.” WSG Motion at 6-7. Of course, if it were that simple, then there would have been no need for the Judges to ask for any more evidence or legal authority, as that ruling is already part of this record; only the perfunctory motion to substitute parties would have sufficed. That ruling did not involve a substitution of parties, because Alfred Galaz, under the name of “Multigroup Claimants,” filed the petition to participate certifying that he had authority to do so. Notably, although that ruling also involved initial uncertainty as to the identity of “Multigroup Claimants,” the fact that there had been an assignment to “Multigroup Claimants” was never concealed. Here, on the other

hand, WSG alleges that two more assignments have occurred without contemporaneous notice to anybody, including the Judges, opposing parties, and claimants, all among individuals or entities using the name “Multigroup Claimants” to obscure the existence of the transfers.

Further, WSG argues that denial of WSG’s motion would be an unreasonable restraint on alienation of rights (WSG Motion at 7), as if the right of an agent takes precedence over the right of the copyright owner in these proceedings. What WSG fails to understand is that an agency involves special and personal fiduciary duties from the agent to the principal. It is not a mere contractual or property right. The Judges have recognized this by making it clear that principals can dismiss agents, regardless of contractual consequences,¹ and the Judges will respect that determination:

It is well-established in distribution proceedings that “[w]here a claimant has unambiguously manifested that it no longer wants a particular entity to represent its interests ... the Judges will honor that request.” 2000-03 Cable Determination, 78 Fed. Reg. at 64988. Ruling and Order at 16.

Throughout the proceedings on the Judges’ Order to Show Cause, it has been the SDC’s position that the secretive process of the Galazes’ transactions calls into question the legitimacy of MGC’s (and now WSG’s) representation of copyright owners. And it is only the interests of copyright owners, not the agent Alfred Galaz, Ryan Galaz, or WSG, that is of concern to the Judges. Alfred Galaz’s purported transfer of the agency agreements to Ryan Galaz without notice to and approval of the copyright owners he represented is ineffective under California law. Ryan Galaz has no right to stand in Alfred Galaz’s place in this proceeding without the approval of the represented entities, nor did he have any right to re-assign the agency agreements. Failing to produce any confirmation of such approval, the motion to substitute parties should be denied.

¹ Of course, the Judges noted that “a claimant’s termination of representation may well have implications for its contractual obligations under a representation agreement.” But such consequence “must be resolved by a court of competent jurisdiction,” not the CRB. Ruling and Order at 16, n. 36.

IV. The Record Does Support A Finding of Wrongdoing in the Transfer of WSG Assets

Regarding the particular circumstances of the transfers in this case, the SDC respectfully disagree with the Judges' finding that "[t]here is insufficient evidence in the record to support the SDC's suggestion that WSG, RTG, Ryan Galaz, and Raul Galaz are engaged in any wrongdoing involving transfers of WSG assets," and they disagree in particular with the Judges' finding that "[t]here is no evidence to support the SDC's assertion that WSG transferred a condominium in Miami to RTG 'without consideration.'" Order at 14. Ryan Galaz, the sole member of RTG, LLC, admitted in his deposition testimony that the transfer of the condominium from WSG to RTG was without consideration:

Q. [W]hat was the source of the funds, or the value, or the consideration that went from RTG to Worldwide Subsidy Group so that RTG could be the owner?

A. There was no money paid for that.

...

Q. Worldwide Subsidy Group just gave it to RTG?

A. Yes, a company that has been operated by my family, yes.

App. 698.² Similarly, Alfred Galaz's testimony that WSG had "\$0" in fair market value at the time he transferred his interests to Ryan Galaz is evidence that there was no intent for RTG to repay the \$900,000 loan from WSG to RTG, because the \$900,000 loan would otherwise be an asset of WSG. App. 114, 723. The evidence demonstrates unequivocally that there are unexplained transfers without consideration, and that these transfers are quite large relative to WSG's known revenues. App. 523-38. These transfers occurred in the context of an established

² "App." citations refer to the Appendix to the SDC's Further Briefing in Response to Multigroup Claimants' Response to Order to Show Cause.

history of fraud and fraudulent conveyances involving at least two of the principal participants in the businesses and conveyances at issue. App. 348-63; *Galaz v. Galaz*, 850 F.3d 800 (5th Cir. 2017).

“[D]irect proof of fraudulent intent is often unavailable,” because those who intend to commit fraud will rarely admit to their intentions. *Galaz*, 850 F.3d at 804 (internal quotations omitted). Instead, courts rely on a “non-exhaustive list of facts and circumstances, which are known as the ‘badges of fraud,’ to be considered in determining whether a transfer was made with actual intent to defraud.” *Id.* The SDC are not omniscient, but they did not “speculate.” As a matter of fact, multiple “badges of fraud,” as that term is defined by law and used by courts, exist in this case.

Even if the Judges do not find these circumstances to be directly relevant to the issues before them, the transactions, including unexplained assignments of the agency agreements, might be relevant to the represented claimants whose “special trust and confidence” Alfred Galaz currently enjoys. *Dingley*, 57 P. at 576-77. Those claimants should have had the opportunity to decide for themselves who will represent their interests and receive their funds. The possibility that a principal’s trust and confidence might be abused through secretive transfers of agency authority, in this case or in any other, underscores the wisdom of California law in requiring the principal’s consent before an agent’s authority may be assigned.

Conclusion

Because WSG has failed to show “by documentary evidence and/or compelling legal argument (with citation to legal authority) that the incoming party has authority to represent the claimants that Alfred Galaz formerly represented in this proceeding,” its motion to substitute

itself as the agent for collection on behalf of the claimants formerly represented by Alfred Galaz should be denied.

Date: July 2, 2020

Respectfully submitted,

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Proof of Delivery

I hereby certify that on Thursday, July 02, 2020, I provided a true and correct copy of the Settling Devotional Claimants' Opposition to Worldwide Subsidy Group LLC's Motion for Substitution of Parties to the following:

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Signed: /s/ Matthew J MacLean