AMERICAN BANKRUPTCY INSTITUTE

Inalienable Copyright Termination Rights Were Bankruptcy Estate Property

Quick Take

Copyright termination rights not exercisable for decades remained estate property because they were not scheduled as assets.

Analysis

In a case "of first impression at the intersection of copyright and bankruptcy," the Eleventh Circuit held that the "termination interest" in a copyright is a property interest that remains in the bankruptcy estate after discharge if it was not scheduled as an asset and was therefore not automatically abandoned.

At the time of bankruptcy, a copyright termination interest is a property right that might not be exercisable for many years. The circuit's holding presents problems: (1) Holders of copyrights and their bankruptcy lawyers may be unaware of termination rights; (2) termination rights might not be exercisable until years after bankruptcy; and (3) a termination right that might have value years later probably had negligible value at the time of bankruptcy.

Termination Rights Under Copyright Law

To appreciate the significance of the facts in the appeal, Circuit Judge Andrew L. Brasher explained the workings of Section 203(a) of the Copyright Act, 17 U.S.C. § 203(a).

Without delving into all of the details, understand that the author or authors can exercise termination rights by serving a written notice two to 10 years before the effective date of the termination. A majority of the copyright holders must sign the termination notice.

Judge Brasher said that "the effective date [of the termination] must fall during a five-year window that begins no earlier than thirty-five years after a grant of the copyright."

In his June 2 opinion for the circuit, Judge Brasher said that Section 203 makes termination rights "inalienable by agreement" and can be effected "'notwithstanding any agreement to the contrary.'" The section, he said, "restricts the inheritors of the interests to close family members or the author's executor, administrator, personal representative, or trustee."

Summarizing, Judge Brasher said that an "artist's termination interests are personal and inalienable, although they can be passed to an artist's heirs."

Rap Albums' Termination Rights

A rap group with four members recorded five albums between 1986 and 1989. The four members gave copyrights in the master recordings to a record company. One of the band members owned the record company.

In 1995, five years after the record company's last option to extend the copyright agreement, the record company and its owner, the band member, filed joint chapter 11 cases where they sold all of their copyrights to a company we shall refer to as the buyer.

In 2000, another band member filed a chapter 7 bankruptcy. We shall refer to him as the debtor.

The debtor did not schedule his copyright termination interests as being among his assets. That was no surprise, because the year 2000 was more than nine years after the last possible effective date of the copyright agreement but more than 10 years *before* the band members could terminate copyright interests.

In 2020, within the window for noticing termination rights, the debtor and two other band members served a termination notice purporting to terminate the buyer's copyright interests.

After receiving the termination notice, the buyer sued and sought a declaration that the copyrights had not been terminated because the debtor's interests in the copyrights still belonged to the debtor's bankruptcy trustee, who had not signed the termination notice. For not having been scheduled as an asset, the owner theorized that the copyright interests remained in the debtor's bankruptcy estate under Section 554(d).

Following denial of cross motions for summary judgment, the district court held a trial. Based on the jury's findings, the district court held that the termination was valid. The buyer appealed to the circuit.

Termination Rights Remained Estate Property

Judge Brasher reversed, holding that "the termination notice was ineffective" because it had not been signed by a majority of those who held the termination rights.

On the law, Judge Brasher held that a termination right is an "interest . . . in property" under Section 541(a) because "it is a contingent right to regain intellectual property." Similarly, he said that "termination interests are contingent rights to regain that intellectual property years after transferring it away."

Closing the circle under Section 541(a), Judge Brasher ruled that termination rights existed at the commencement of the bankruptcy case and thus were property of the debtor's estate.

Judge Brasher rejected the idea that the termination rights could not become estate property because they were personable and inalienable. He said, "[B]ankruptcy law sweeps termination interests into a debtor's estate under section 541 'notwithstanding any provision in . . . applicable nonbankruptcy law' that 'restricts or conditions transfer of such interest[s] by the debtor.' 11 U.S.C. § 541(c)(1)."

On the question of inalienability, Judge Brasher quoted the Eleventh Circuit for saying that "specific law is ordinarily 'treated as an exception to the general rule.'" He held that the Copyright Act's Section 203 was the general rule overcome by Section 541 and its "specific exception to that rule that permits those interests to enter bankruptcy estates."

Because a majority of band members had not signed the termination notice, Judge Brasher reversed and remanded "for further proceedings consistent with this opinion."

Judge Brasher left the door open for the court on remand to find a valid termination because he said that the circuit did "not address how termination interests should be treated in bankruptcy. And we do not decide today what [the debtors'] heirs need to do to exercise those interests in the light of his bankruptcy."

Observations

What's a specific law and what's a general rule can be in the eyes of the beholder. Nonetheless, this writer tends to see the statutory inalienability of copyright reversionary interests as specific law, while Section 541(a)'s sweep of "all legal or equitable interest" is a general law applicable to all types of contingent or future rights, not just copyright interests.

Had the debtor or counsel known about termination rights, and had those rights been scheduled as assets in the debtor's bankruptcy case, termination rights would have had negligible value, would not have been administered and would have been abandoned. In other words, termination rights had no value to the debtor's creditors in 2000 but did have value for creditors 26 years after bankruptcy.

Developing those thoughts, Prof. Robert M. Lawless provided ABI with the following commentary:

> Perhaps no debtor in the history of bankruptcy law has scheduled these termination rights, especially years before the debtor had a right to exercise them. Even if this debtor had scheduled the termination rights, they held no value to repay creditors. Their disclosure would not have made any difference in the outcome of the bankruptcy filing.
>
> The holding is a cousin to the judicial estoppel doctrine, currently pending before the Supreme Court in *Keathley*, where a nondisclosure of no consequence becomes a game of "gotcha" to deprive a debtor of valuable rights outside the bankruptcy case.
>
> The courts might consider developing a "harmless error" framework to distinguish between cases where debtors rightfully suffer the consequences of a knowing nondisclosure and cases where missing information stems from an inadvertent omission of filling out more than

sixty pages of forms demanding information on all aspects of a debtor's financial situation.

Prof. Lawless is the Max L. Rowe Professor of Law and co-director of the Program on Law, Behavior & Social Science at the University of Illinois College of Law.

Case Name

Lil' Joe Records Inc. v. Ross

Case Citation

Lil' Joe Records Inc. v. Ross, 24-13978 (11th Cir. June 2, 2026).

11th Circuit

Asset Sales

Claims

Bankruptcy Litigation

Consumer Bankruptcy

Case Type

Consumer

Alexa Summary

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(3) a termination right that might have value years later probably had negligible value at the time of bankruptcy.

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