



COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0273

January 6, 2025

Lahna Turner

CLAIMANT

v.

Michael Bloom and Solaris Entertainment

RESPONDENTS

FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board (“Board”) finds in favor of Respondents Michael Bloom (“Bloom”) and Solaris Entertainment (“Solaris”) (collectively, “Respondents”) and dismisses the claim with prejudice.

I. Procedural History

Claimant Lahna Turner (“Turner”) filed the initial claim in this proceeding against Respondents on December 23, 2022. (Dkt. 1). She filed the operative Amended Claim on February 14, 2023 (“Claim”). (Dkt. 5). Bloom filed a response to the Amended Claim on August 21, 2023 (“Claim Response”) (Dkt. 21), and stated that it applied to Solaris as well. (Dkt. 23).

The Board held a pre-discovery conference on September 13, 2023, and a status conference on November 29, 2023. (Dkt. 24, 26). On January 10, 2024, the Board issued an order closing discovery as of January 17, 2024, and ordering the parties to file written testimony. (Dkt. 27). Turner filed a Claimant Party Statement (Dkt. 28), an evidence list (Dkt. 29), evidence (*id.* at Exhibit A-X), and witness statements from herself (“Turner Statement”) (Dkt. 30), her business partner Michael Kopstain (“Kopstain Statement”) (Dkt. 31), her attorney Natalie Northup (“Northup Statement”) (Dkt. 32), and a paralegal, Barbara Bacon (“Bacon Statement”) (Dkt. 33). Respondents filed Respondents’ Party Statement (Dkt. 43), a letter from Bloom’s entertainment manager Jamie Gruttemeyer (Dkt. 37),¹ a letter from Shellie (Fontana) Gibson (“Gibson”) (Dkt. 35), an evidence list (Dkt. 44), and evidence (Dkt. 36,

¹ Ms. Gruttemeyer characterized her letter “as an expert witness statement.” *Id.* However, Respondents did not request permission to present an expert witness, and the Board did not authorize it. Further, the letter does not comply with the requirements for expert testimony; and the Board finds that an expert witness is not necessary,

38-39). Turner filed a Reply Party Statement (Dkt. 47), a reply evidence list and evidence (Dkt. 48), and statements from herself (“Turner Reply Statement”) (Dkt. 49), Reply Witness Statement of Jonathan Freund (“Freund Statement”) (Dkt. 50), and Reply Witness Statement of Natalie Northup (Dkt. 51).

On October 8, 2024, the Board directed the parties to submit any additional documentary evidence regarding Bloom’s role in the creation of the allegedly infringed work and any ownership interest he may have in the work, including any relevant agreements. (Dkt. 53). Turner filed supplemental evidence on October 22, 2024. (Dkt. 54). The case is now ready for final determination.

II. Factual History

Turner alleges infringement of *Just Correct* (the “Work”), a motion picture that features a 2003 stand-up comedy performance by her husband, comedian Ralphie May (“May”), who died in 2017. Turner Statement ¶¶ 5-6. Turner does not submit the recording but does include copies of the front and back covers and an insert from the DVD of the Work. Exhibit A (Dkt. 29); Exhibits AA, CC (Dkt. 54). According to Turner, the Work was created subject to an August 19, 2003 letter agreement between third-party Melee Entertainment, L.L.C. (“Melee”) and May. Turner Statement ¶¶ 8-9; Exhibit C (Dkt. 29). In that agreement, May agreed to record and deliver to Melee a comedy LP and a comedy DVD (unnamed in the agreement) within 120 days thereafter, and that “Melee is the sole, exclusive and perpetual owner of all Masters, Products and artwork created for use in connection therewith . . . as a so-called ‘work-for-hire’ which ownership entitles Melee, among other things, to all right, title and interest in the copyright therein.” Exhibit C ¶¶ 2(a), 10(a). May also agreed that “[i]f any of the foregoing is determined not to be such a ‘work-for-hire,’ it will be deemed transferred to Melee by this Agreement, together with any rights and title in and to it.” *Id.* ¶ 10(a). Further, May agreed that Melee had “the unlimited and exclusive worldwide, perpetual rights to use and exploit the foregoing by any methods and through any and all media now or hereafter known.” *Id.* In exchange, Melee agreed to pay May royalties, an advance, and a recording budget. *Id.* ¶¶ 3-4.

appropriate, or allowed in this case. *See* 37 C.F.R. § 225.4(b). The letter also exhibits no first-hand knowledge of the facts in dispute and will be disregarded. *See* 37 C.F.R. § 222.15(b)(2)(iii).

Bloom states that May first met with him in early fall 2003 to discuss the possibility of Bloom producing and directing the Work. Respondents' Party Statement, at 1. "After we met, I knew I wanted to Produce and Direct him." Exhibit M at Item 7. (Dkt. 29). Bloom directed the Work, and he and Turner are among its credited producers. Claimant Party Statement at 1; Turner Statement ¶ 6; Exhibit A; Exhibit AA. Bloom states that he filmed May performing in November 2003 at the Laugh Factory in West Hollywood. Exhibit M at Item 5(a). Four performances were taped in a "5-camera shoot." *Id.* at Item 15b. Bloom states, "I told [May] I wanted to shoot the same show 4 times. We shot 2 on a Friday and 2 on the following Saturday. He performed his show as close to identical as anyone could 4 times." Respondents' Party Statement, at 1. "The special was shot in November I believe, and then released after I completed the post-production . . . in the early part of 2004." Exhibit M at Item 5(a).

Bloom asserts, "I created the video special. The entire crew was staffed by my company." *Id.* at Item 5(b). He adds, "I shaped his performance into a broadcast presentation and ensured it met all industry broadcast standard requirements. I managed a production crew as well as a post-production team. I was responsible completely for all things relating to the creation of the finished program you see now titled 'Just Correct.'" *Id.* at Item 9. He specifies that his work also included "post-production and audio editing and sweetening." Respondents' Party Statement, at 2.

Melee publicly released the Work on February 10, 2004. Turner Statement ¶ 9; Exhibit E (Dkt. 29). Credits on the back cover of Melee's DVD of the Work state the following: it was "starring" and "written by" May, who was also listed as an executive producer; "produced by" Turner, Bloom, and a third party; and "directed by" Bloom. Exhibit AA. According to Turner, the Work "was highly successful" (Turner Statement ¶ 9), and according to Bloom, it "reached platinum status from RIAA." Respondents' Party Statement, at 1.

The DVD included a bonus feature titled *A Video Diary from Iraq* with footage of May performing in Iraq for the United States military in the fall of 2003. *Id.* at 2; Turner Reply Statement ¶¶ 4-5; Exhibit AA. Turner, who also performed on that tour, attests that "[w]hile in Iraq, I worked closely with Ralphie May to assist with his performances. I personally decided what to film there and shot most of the footage from this trip that appears on

the Just Correct DVD.” Turner Reply Statement ¶ 5. Turner’s counsel has asserted that the Iraq footage she recorded was owned by her and not transferred to Melee, but that she gave Melee an oral license to include that footage on the *Just Correct* DVD. Exhibit J at LT-00166 (Dkt. 29).

Bloom asserts that “[w]hen Ralphie got back from Iraq, I suggested I could create a documentary about his time there....” Respondents’ Party Statement, at 2. In response to an interrogatory, Bloom states that he “produced an additional video program” that he thought “would make a great incentive as a bonus feature on the DVD release. I did indeed cut it together then got back together with Ralphie so he could record his voice on a DAT recording device I brought with me to be used as a voice over addition to the home video. I called that program Ralphie May, A Video Diary From Iraq.” Exhibit M at Item 3. The bonus feature was included on the DVD release. Respondents’ Party Statement, at 1.

According to Respondents, Melee was “only a licensed distributor of the program and the license expired 12 years after it was issued.” Claim Response. Bloom contends that, “it was always understood that once Melee had run its course with the program . . . I would be able to offer it for sale in 2014,” and “[i]t was always my understanding that the edited show would be mine after 12 years of licensing at Melee Entertainment.” Exhibit M at Items 5(b), 5(d), 6. Respondents assert that before the shoot, in a meeting attended by Bloom, May, and Melee’s vice president Shellie Fontana (Gibson),² “it was agreed” that Melee would have only a twelve-year “use agreement,” and that “[a]fter 12 years all rights were **returned** to [Bloom].” Respondents’ Party Statement, at 1 (emphasis added). Fontana (Gibson) described the meeting in a notarized but unsworn statement, dated April 16, 2020, stating that Bloom owns the Work:

Michael Bloom agreed to Produce and Direct *Just Correct* in September of 2003. It was shot in October 2003. Michael agreed to produce it for cost after we agreed to two shared rights agreements that would expire (first agreement) 7 years after delivery and a second agreement expiring 5 years after the first making it a total of 12 years after delivery. I didn’t remember exactly what the delivery date was but we released it in early 2004. When he told me the rights were his effective November of 2015, I said that sounds about right. What is most important is that both titles *Just Correct* and *A Video Diary From Iraq* are both owned by Michael Bloom.

(Dkt. 35).

² Ms. Fontana (Gibson) is now deceased. See Exhibit H, at LT-00130 (Dkt.29); Exhibit M, at Items 5(d), 6.

Importantly for this determination, there is no documentary evidence of any agreements between Melee and Bloom. Bloom states that his sister destroyed his records related to May long ago (Exhibit M at Item 4), and neither Turner nor Melee has submitted any evidence showing any rights Melee received from Bloom. Melee's general counsel declares that Melee never entered any agreement with Respondents transferring any rights in the Work or sharing ownership of the Work with them. Freund Statement ¶¶ 8-9.

Bloom owns Solaris and describes it as his DBA. (Dkt. 23). Respondents distributed the Work on the Solaris YouTube channel, posting it both as a whole and split into separate pieces. Turner Statement ¶ 12. The Solaris channel's "Description" page indicates that Bloom started the channel "to share work I've done you may have missed," and the evidence shows that, as early as 2015 or as late as 2019, he posted the Work on the channel: "In 2003 I agreed with my (then) agent to take on the Ralphie May 'Just Correct' TV Special. . . . [I] just posted Just Correct here and hope I can realize any profit on it 16 years after the fact." Exhibit F (Dkt. 29); Bacon Statement. Respondents also distributed the Work through other platforms, authorizing InGrooves, a Universal Music company, to distribute digital copies to third parties from 2014 to 2019, and authorizing The Orchard, a Sony Music company, to do the same from 2019 to April 2022. Exhibit M at Items 3, 12; Northup Statement ¶¶ 10-11. Through InGrooves and The Orchard, Respondents made the Work available for streaming on "YouTube, iTunes/Apple, Pandora, Facebook, Spotify, Amazon Unlimited, Google Play, Amazon Music, iHeartRadio, Napster, and other services." Northup Statement ¶ 11.

In early 2020, Turner became aware that Respondents had posted the Work on the Solaris YouTube channel, and that The Orchard had distributed it on YouTube and elsewhere. In response, she contacted Respondents and The Orchard asserting that their uses were infringing and requesting removals of the Work from those platforms. Turner Statement ¶¶ 12-13. In a March 23, 2020 email to Turner, Bloom noted that he possessed the master and source materials for the Work and disputed Turner's copyright ownership. *Id.* ¶ 12; Exhibit G (Dkt. 29).

On October 4, 2022, Melee assigned its copyright interest in the works made under the 2003 agreement, including the Work, to Turner ("Melee Assignment"). Turner Statement ¶ 10; Freund Statement ¶ 7; Exhibit D (Dkt. 29). On October 12, 2022, Turner emailed a copy of that assignment to The Orchard, stating, "I am now the

sole owner of ‘Just Correct.’” Exhibit H (Dkt. 29). The Orchard “had no choice but to pull it down wherever they placed it.” Respondents’ Party Statement, at 2. *See also* Turner Statement ¶ 17. Bloom applied to register the copyright for the Work the next day; however, Copyright Office records show that the application file is closed.³ (Dkt. 38-39). Turner also applied to register the Work, submitting the Melee DVD as deposit material, and the Copyright Office issued Registration No. PA002396570 to her with an effective date of registration of December 22, 2022. Turner Statement ¶ 11; Exhibit E (Dkt. 29). The Certificate of Registration identifies Melee as the author of a work made for hire and Turner as the copyright claimant “[b]y written agreement.” Exhibit E.

Respondents assert that they ceased distribution in June 2022. Exhibit M at Item 11. Bloom certified, on January 9, 2024, that the Work is currently “unavailable anywhere.” *Id.* at Item 12. However, as of February 23, 2024, it was still available on Deezer and Spotify in Solaris’ name. Northup Statement ¶ 23; Exhibit W, X (Dkt. 29).

III. Analysis

To succeed on a claim for copyright infringement, a claimant must establish: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publications, Inc. v. Rural Telephone Serv. Co.*, 499 U.S. 340, 361 (1991). In this case, the central question involves ownership of the Work. Whether there was unauthorized copying depends on who or what entities owned the Work.

Turner claims ownership as Melee’s assignee and denies that Respondents have any rights to the Work. Respondents dispute Turner’s ownership and contend that Bloom owns the copyright.

Copyright “vests initially in the author or authors of the work.” 17 U.S.C. § 201(a). “As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression

³ Based on U.S. Copyright Office records, Bloom filed the application, Service Request No. 1-11819768501, on October 13, 2022, with an .mp4 file as a deposit copy of the work. On December 29, 2022, the Office emailed Bloom questions about the application, noting that the .mp4 file did not appear to meet the deposit requirement for a published work: “The deposit requirement for motion pictures first published in the United States is one copy of the best edition published at the time of registration. Online sources indicate that this comedy special was released on DVD in 2004. If so, this represents the best edition format and is required for registration.” The application file was closed administratively on February 12, 2023 because Bloom did not reply, then reopened based on his April 18, 2023 request. The Office again emailed Bloom questions on May 5, 2023, requesting a response within 45 days, and closed the application file again on June 19, 2023 because Bloom did not reply. *See* U.S. Copyright Office, Circular 19: Deadlines for Responding to Copyright Office Correspondence, www.copyright.gov/circs/circ19.pdf.

entitled to copyright protection.” *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (citing 17 U.S.C. § 102). However, “[i]n the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author” and owns the copyright, absent a signed agreement to the contrary. 17 U.S.C. § 201(b). While it is unclear whether what May delivered to Melee qualifies as a “work made for hire,” that is not dispositive here because Melee and May took a “belt and suspenders” approach in the 2003 agreement. In short, they agreed that the Work would be considered a work for hire, but if it was not, the Agreement would serve as an assignment of May’s rights in the Work to Melee. (Exhibit C ¶ 10 (Dkt. 29)). Therefore, one way or another, Melee obtained whatever rights May might have had in the Work.

However, even though Melee clearly obtained any rights *May* had in the Work, there is no evidence that demonstrates that Bloom’s copyright interest passed to Melee as well. Bloom made significant contributions to the work: directing, producing, and editing it and controlling many aspects of the filming and production. Turner has not shown that Bloom signed a work-for-hire agreement or was Melee’s employee. There is also no evidence that Bloom signed an assignment transferring his copyright interest in the Work to Melee, as section 204 would require in order for such a transfer to take place. Even though Melee’s general counsel states that Melee did not transfer any ownership interest in the Work to anyone, including Bloom and/or Solaris “other than the 2003 Ralphie May Recording Agreement and the 2022 Copyright Assignment” and sets forth other sworn statements relating to the ownership of the Work, he never states that Bloom or Solaris transferred any rights to Melee. Freund Statement ¶¶ 7-9.

The preponderance of evidence before the Board shows that *Just Correct* is a joint work. “The authors of a joint work are co-owners of copyright in the work.” 17 U.S.C. § 201(a). “A ‘joint work’ is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.” 17 U.S.C. § 101. As the legislative history regarding joint authorship states, “a work is ‘joint’ if the authors collaborated with each other, or if each of the authors prepared his or her contribution with the knowledge and intention that it would be merged with the contributions of other authors as ‘inseparable or interdependent parts of a unitary whole.’ The touchstone here is the intention, at the time the writing is done, that the parts be absorbed or

combined into an integrated unit, although the parts themselves may be either ‘inseparable’ (as the case of a novel or painting) or ‘interdependent’ (as in the case of a motion picture, opera, or the words and music of a song).” H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976) at 120; S. Rep. No. 94-473, 94th Cong., 1st Sess. (1975) at 103-104. In evaluating that intention, “the focus is on the parties’ intent to work together in the creation of a single product, not on the legal consequences of that collaboration.” *Jankey v. Lake County Convention & Visitors Bureau*, 576 F.3d 356, 362 (7th Cir. 2009) (citing *Erickson v. Trinity Theater, Inc.*, 13 F.3d 1061, 1068-69 (7th Cir. 1994)).

The evidence makes clear that Bloom directed the Work, he is credited as such, and he as well as Turner are among its credited producers. Claimant Party Statement at 1; Turner Statement ¶ 6; Exhibit A; Exhibit AA. For instance, Bloom states, “I told [May] I wanted to shoot the same show 4 times. We shot 2 on a Friday and 2 on the following Saturday” using a “5-camera shoot.” Respondents’ Party Statement, at 1; Exhibit M at Item 15(b). Further, Bloom asserts, “I created the video special. The entire crew was staffed by my company.” Exhibit M at Item 5(b). He adds, “I shaped his performance into a broadcast presentation and ensured it met all industry broadcast standard requirements. I managed a production crew as well as a post-production team. I was responsible completely for all things relating to the creation of the finished program you see now titled ‘Just Correct.’” *Id.* at Item 9. He specifies that his work included “post-production and audio editing and sweetening.” Respondents’ Party Statement, at 2. Credits on the back cover of Melee’s DVD of the Work state the following: it was “starring” and “written by” May, who was also listed as an executive producer; produced by Turner, Bloom, and a third party; and directed by Bloom. Exhibit AA. Turner’s rebuttal to Bloom’s testimony and the evidence is not persuasive and, in fact, one piece of evidence that was added to the rebuttal testimony supports the fact that the Work was a joint work. *See* Exhibit AA.

The DVD included a bonus feature titled *A Video Diary from Iraq* with footage of May performing in Iraq. Respondent Party Statement, at 2; Turner Reply Statement ¶¶ 4-5; Exhibit AA. Turner claims that with respect to May’s Iraq tour, she assisted with his performances, decided what to film, and shot most of the footage that appears in the Work. Turner Reply Statement ¶ 5. Bloom asserts that he suggested that that he could create a documentary about May’s time in Iraq from that footage. Respondent Party Statement, at 2. Subsequently, Bloom produced the

additional video program that he titled “Ralphie May, A Video Diary From Iraq,” which became a bonus feature on the DVD release. Exhibit M at Item 3. His contributions to the bonus feature included cutting the footage together and recording May’s voice on a DAT recording device to be used as a voice-over addition to the Work. *Id.*

In light of the foregoing, the Board finds that *Just Correct* is a joint work and, despite the agreement between May and Melee, Bloom’s rights as a joint author never left him. An author is someone “to whom anything owes its origin; originator; maker; one who completes a work of science or literature.” *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884). Melee was an owner by virtue of the Agreement with May, and Bloom was an author and owner by virtue of his own creative contributions to the Work, in collaboration with May.

Bloom effectively superintended the Work as its director and one of its producers. *See Aalmuhammed v. Lee*, 202 F.3d 1227, 1233 (9th Cir. 2000) (listing those “at the top of the screen credits,” such as a director with “artistic control” as authors). Both he and May made significant creative contributions to the Work. They manifestly intended that those contributions would be merged into interdependent parts of a unitary whole. Bloom asserts that before May died, he acknowledged several times that Bloom should be making money from sales of the Work by Solaris. Respondents’ Party Statement, at 2-3. In fact, he states that when he offered May a share of the profits from Solaris’ sales, May replied, “Bloomie, (a nickname he gave me) that is all yours brother.”⁴ *Id.* at 3.

As the assignee of Melee’s copyright interest in the Work and potentially as contributor to the bonus portion of the Work, Turner may raise infringement claims against infringers, but not against Bloom. “One co-owner of a joint work may not assert a copyright infringement claim against another co-owner.” *Custom Dynamics, LLC v. Radiantz LED Lighting, Inc.*, 535 F. Supp. 2d 542, 550 (E.D.N.C. 2008). That is “because joint authors cannot infringe their own work.” *Brown v. McCormick*, 23 F. Supp. 2d 594, 605 (D. Md. 1998). “[B]ecause an individual cannot infringe his own copyright . . . [t]he only duty joint owners have . . . is to account for profits from [the joint work’s] use.” *Ashton-Tate Corp. v. Ross*, 916 F.2d 516, 522 (9th Cir. 1990) (quoting *Weissmann v. Freeman*, 868 F.2d 1313, 1318 (2d Cir. 1989)). The Board does not hear accounting claims and one has not been raised here.

⁴ The Board notes this statement, but to the extent there are any hearsay concerns, the statement is noted only for the fact that it was allegedly said and not for the truth of the matter asserted by third-party May.

Bloom, as a joint author, has had an authorship and ownership interest in the Work since its creation. His use of the Work, and the use by his DBA Solaris, is not infringing.

IV. Conclusion

The Board finds in favor of Respondents Michael Bloom and Solaris Entertainment and dismisses the copyright infringement claim with prejudice.

Copyright Claims Board