

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIMENSIONAL MUSIC PUBLISHING, LLC.	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ANTOINETTE KERSEY, as Executrix of the Estate of Tyrone G. Kersey, KISHA KERSEY, and PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP,	:	NO. 05-6437
	:	
Defendants.	:	

ORDER

AND NOW, this 12th day of July, 2006, upon consideration of the Kersey Defendants’ Motion for Reconsideration and Clarification of the Court’s June 23, 2006 Memorandum and Order (Document No. 44, filed June 30, 2006) and Memorandum of Plaintiff Dimensional Music Publishing LLC in Opposition to the Kersey Defendants’ Motion for Reconsideration (Document No. 45, filed July 7, 2006), for the reasons set forth in the attached Memorandum, the Kersey Defendants’ Motion for Reconsideration and Clarification of the Court’s June 23, 2006 Memorandum and Order is **DENIED**.

MEMORANDUM

This lawsuit involves the rights, specifically the renewal rights, to the song “Disco Inferno” (hereinafter “the Composition”).¹ On June 23, 2006, the Court issued a Memorandum and Order granting plaintiff’s motion for partial summary judgment on the limited question of the vesting of renewal rights. Dimensional Music Publ’g, LLC v. Kersey, ___ F. Supp.2d ___,

¹A more complete account of the facts is found in Dimensional Music Publ’g, LLC v. Kersey, ___ F. Supp.2d ___, 2006 WL 1716568, at *1-2 (E.D. Pa. June 23, 2006).

2006 WL 1716568 (E.D. Pa. June 23, 2006). The Court held that, assuming that Tyrone Kersey (“Kersey”), one of the two authors of the Composition, validly transferred his renewal rights to plaintiff, the renewal rights to the Composition vested in plaintiff as a result of plaintiff’s application for renewal rights filed on January 5, 2005, when Kersey was still alive. Id. at *8. Defendants Antoinette and Kisha Kersey have filed a motion for reconsideration of this Memorandum and Order.

There are only three grounds on which a court may grant a motion for reconsideration: an intervening change in the controlling law, the availability of new evidence not available when the court granted the prior motion, or the need to correct a clear error of law or fact or prevent “manifest injustice.” Max’s Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); DeFrancesco v. Weir Hazelton, Inc., 232 F.R.D. 454, 455 n.3 (E.D. Pa. 2005). The party seeking reconsideration bears the burden of establishing one of these grounds. Max’s Seafood Café, 176 F.3d at 677; In re Loewen Group Inc. Sec. Litig., 2006 WL 27286, at *1 (E.D. Pa. Jan. 5, 2006) (“In a motion for reconsideration, the burden is on the movant.”) (internal quotation omitted).

In their motion for reconsideration, defendants do not identify which of the three grounds justify reconsideration. Instead, they argue that the Court’s June 23, 2006 Memorandum ignored the impact of an application for renewal registration filed by Kersey prior to his death on January 25, 2005, and which became effective April 5, 2005. Def. Motion at 5. The Court assumes that this argument amounts to an assertion that the Court made a clear error of fact or law.² The Court declines to grant the motion for reconsideration on that ground.

² In their motion for reconsideration, the Kersey defendants do not assert that there has been an intervening change in controlling law, nor do they present new evidence which was previously unavailable.

For the purposes of the June 23, 2006 Memorandum, the parties and the Court agreed to assume that Kersey made a valid transfer of his renewal rights in 1977 to Golden Fleece Music and Six Strings Music, which, through a series of transactions, eventually transferred the renewal rights to plaintiff. Dimensional Music, 2006 WL 1716568, at *1 n.4 (“For purposes of this summary judgment motion, defendants have agreed to assume that Kersey assigned his renewal rights to the Composition to plaintiff.”). Authors have long been able to transfer their renewal rights to third parties. See Fred Fisher Music Co. v. M. Witmark & Sons, 318 U.S. 643, 656 (1943). Because plaintiff filed an application for renewal rights with the Copyright Office on January 5, 2005, when Kersey was still alive, assuming Kersey assigned his renewal rights to plaintiff, the renewal rights vested in plaintiff as the person entitled under the 1992 Copyright Act to the renewal of the copyright at the time the application was made. 17 U.S.C. § 304(a)(2)(B)(i);³ Dimensional Music, 2006 WL 1716568, at *6. Kersey’s application for renewal registration, filed on January 13, 2005, and effective on April 5, 2005,⁴ is irrelevant to this analysis and conclusion. In fact, as plaintiff correctly observes, even if plaintiff had not applied to register the renewal rights on January 5, 2005, Kersey’s application for renewal

³ Section 304(a)(2)(B)(i) states that “if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, [the copyright] *shall vest* upon the beginning of such further term, *in any person who is entitled under paragraph (1)(C) to the renewal and extension of the copyright at the time the application is made*” (emphasis added).

⁴ According to Antoinette Kersey, Kersey’s sister, executrix of his estate, and a defendant in this case, she filed the application for renewal registration on January 13, 2005 on Kersey’s behalf. Kersey Decl. ¶ 7, Pl. Cross-Motion for Summary Judgment. On March 24, 2005, she was notified by the United States Copyright Office that the application was delayed because the proper registration fee was not remitted. Id. ¶ 8. After remitting the proper fee, the Copyright Office issued a certificate of registration on April 5, 2005. Id. ¶ 9.

registration would have vested the renewal rights in plaintiff, because, again assuming that Kersey transferred the renewal rights to plaintiff, plaintiff was the person “who [was] entitled . . . to the renewal and extension of the copyright at the time the application was made.” 17 U.S.C. § 304(a)(2)(B)(i).

The Kersey defendants have not presented any evidence or argument warranting reconsideration of the Court’s June 23, 2006, Memorandum and Order. Accordingly, the Kersey defendants’ motion for reconsideration is denied.

BY THE COURT:

/s/ Honorable Jan E. DuBois

JAN E. DUBOIS, J.