

The Broad Umbrella Covering Joint Authors Also Protects Collaborators

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by Bryan M. McGarry



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A recent decision from the federal court of the Southern District of New York serves as a reminder of the broad rights enjoyed by a joint author under the Copyright Act, including the right to create and license derivative works without the knowledge or consent of the

other joint authors.

Authored by Judge Kimba Wood, the recent decision in *BMG Rights Management, LLC, et al., v. Atlantic Recording Corp., et al.*, considers whether a group of artists who authored an original work can sue another group who allegedly authored, released and distributed a work that was derivative of the original work if at least one individual co-authored both the original and derivative work.

Plaintiffs are co-owners, along with rhythm and blues artist Chris Brown of the song “Came to Do.” After creating “Came to Do” with Plaintiffs, Brown co-authored a song called “Post to Be,” which Plaintiffs alleged was derivative of “Came to Do.” Plaintiffs sued the co-authors of “Post to Be,” as well as those involved with releasing and distributing the work, seeking an injunction forbidding further copyright infringement, damages, recovery of profits, and a declaratory judgment setting royalties due to Plaintiffs from the exploitation of “Came to Do.”

All but one of the Defendants moved to dismiss, arguing they could not be liable for copyright infringement because Brown was a joint author and joint owner of both songs. Judge Wood agreed. The court first concluded that Brown could not be held liable for copyright infringement because as a joint owner and author of the original work “Came to Do,” Brown had an unrestricted right to use the song as he pleased, including to distribute, perform and display the song, or create a derivative work. Consequently, Brown could not be liable for any derivative work he created, or for any license (implied or otherwise) that he granted to others.

The Court then concluded that Brown’s collaborators could also not be held liable for copyright infringement. The death knell to Plaintiffs’ copyright infringement claim against Defendants was Plaintiffs’ acknowledgement that Brown was also a co-author of the allegedly derivative work “Post to Be.” The court concluded that as a co-author of the original work, Brown was entitled to exploit the work as he wished, including by co-writing the alleged derivative “Post to Be” with Defendants and allowing them to release, distribute and manage it. As a result, Plaintiffs’ claim for copyright infringement was not viable.

The case continues, however, because the Court also concluded that if Plaintiffs can prove that “Post to Be” is actually derivative of “Came to Do,” then the joint owners of “Post to Be” will have to account for the profits they generate from, and Plaintiffs will be entitled to some royalty from the use of, the derivative work. The court set discovery on the issue of whether “Post to Be” is actually derivative of “Came to Do.”

Judge Wood’s decision is a great reminder of the broad umbrella of rights afforded to a joint author of a copyrightable work, and how those rights can be used to protect those who collaborate with a joint author to create a derivative work.