Kluwer Copyright Blog

Copyright case: Everly v. Everly, USA

Thomas Long (Wolters Kluwer Legal & Regulatory US) · Wednesday, May 13th, 2020

Although the time limit for the claim that Phil Everly was a co-author would begin running when Phil's authorship was repudiated by Don Everly, factual issues precluded summary judgment on the issue.

A claim brought by the estate and children of deceased pop musician Phil Everly—one of the famous Everly Brothers—asserting that Phil was a co-author of the 1960 hit "Cathy's Clown" was not time-barred as a matter of law, the U.S. Court of Appeals in Cincinnati has determined. In a split decision, the appellate court held that an authorship claim—like an ownership claim—accrues when the assertion of authorship is expressly repudiated (in the case of an authorship claim, by another person claiming sole authorship). There was a genuine issue of material fact as to whether the other Everly brother, Don Everly, had expressly repudiated Phil's co-authorship of "Cathy's Clown," or whether Phil had merely agreed to transfer certain ownership interests to Don. Accordingly, the appellate court reversed and remanded a district court's grant of summary judgment to Don and holding that Phil's successors were estopped from asserting ownership or termination rights in the song (Everly v. Everly, May 4, 2020, Bush, J.).

Case date: 04 May 2020
Case number: No. 19-5150
Court: United States Court of Appeals, Sixth Circuit

A full summary of this case has been published on Kluwer IP Law.

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