
“Dream Syndicate” Attempts at Class Certification is Just a Dream
John Waite, et al. v. UMG Recordings Inc., et al., No. 19-cv-01091 (S.D.N.Y.)

By: Joe Saltiel & Andrew Choi | February 3, 2023

On January 27, 2023, a district court judge refused to grant a group of musicians class certifications in their copyright infringement efforts against their former record label, Universal Music Group (UMG). The district court found that the need for individualized proof in a work-made-for hire copyright case, such as the one at issue here, precludes class certification.

Section 203 of the Copyright Act provides a limited opportunity for authors to terminate a previous transfer of their copyright. Relying on Section 203, a group of musicians, including punk rock band “The Dickies,” alternative rock band “Dream Syndicate,” and rock singer Straw Harris, sought to terminate the copyright assignments in their recordings that they had previously granted to UMG. UMG refused to transfer the copyrights back to the musicians. UMG argued that the recordings were works-made-for-hire, making UMG the actual author of the works, hence, the copyright assignments were not subject to termination pursuant to Section 203. Disagreeing with UMG, the musicians filed suit and moved for an order certifying a class action on behalf of essentially all recording artists who served, or will serve, UMG termination notices pursuant to Section 203 between 2013 and 2031.

To certify a class, each member’s claim must have common issues both resolvable through generalized proof and are more substantial than the other issues affecting only individual members. UMG asserted that its work-made-for-hire defense defeats a class certification determination, because it would require “a fact-intensive inquiry based on various fact-based tests that cannot be resolved based on common proof.” The district court agreed. In considering the work-made-for-hire defense, the district court would have to evaluate evidence unique to UMG’s action with respect to each musician, each musician’s termination notice, and whether each musician’s sound recordings were “specially commissioned works” or “contributions to collective works.” All of these inquiries are individualized and fact-specific. The district court determined that the musicians failed to demonstrate that these inquiries were capable of resolution based on generalized proof. “The individualized evidence and case-by-case evaluations necessary to resolve those claims make this case unsuitable for adjudication on an aggregate basis.” The district court consequently declined to certify the class.

As noted by the district court, copyright cases are poor candidates for class-action treatment, because their similarities are superficial. While it is true that each member of the purported class is in a similar situation, and that the district court will have to apply the same type of legal analysis for each claim, the underlying facts for each member are different. Having to evaluate such individualized evidence will usually preclude class certification. This case serves as a cautionary tale for plaintiffs trying to certify a class based on copyright infringement.