

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2017

Docket No. 17-1549-cv

November 14, 2018

John Wilson, Charles Still, Terrance Stubbs,

Plaintiffs-Appellants,

v.

Dynatone Publishing Company, UMG Recordings, Inc., Unichappell Music,
Inc.,

Defendants-Appellees.

Before:

PIERRE N. LEVAL, GUIDO CALABRESI and JOSE A. CABRANES,
Circuit Judges.

Defendants petition for rehearing following this panel's decision in
Wilson v. Dynatone, 892 F.3d 112 (2d Cir. 2018). That petition is DENIED.

LITA ROSARIO, PLLC,
Washington, DC, *for Plaintiffs-Appellants.*

ROBERT A. JACOBS
MANATT, PHELPS & PHILLIPS LLP
Los Angeles, CA, *for Defendants-*
Appellees.

1 LEVAL, *Circuit Judge*:

2 In this dispute over ownership of the renewal term copyrights in
3 certain musical compositions and sound records, we vacated the district
4 court's grant of Defendants' motion under Fed. R. Civ. P. 12(b)(6) to dismiss
5 for untimeliness and remanded for further proceedings. *Wilson v. Dynatone*,
6 892 F.3d 112 (2d Cir. 2018). Defendants petition for reconsideration, arguing
7 that our ruling was incorrect and that Plaintiffs' suit was untimely because
8 under § 205(c) of the Copyright Act, Plaintiffs' ownership claim accrued—
9 triggering the running of the statute of limitations—when Defendants
10 registered their claim of ownership in the Copyright Office. Section 205(c)
11 states:

12 Recordation of a document in the Copyright Office gives all persons
13 constructive notice of the facts stated in the recorded document, but
14 only if—(1) the document, or material attached to it, specifically
15 identifies the work to which it pertains . . . and (2) registration has been
16 made for the work.
17

18 We reject Defendants' argument that, at least in the circumstances of
19 this case, registration, without more, triggers accrual of an ownership claim.
20 Their interpretation of § 205(c) would mean that after authoring a work, an
21 author would need to constantly monitor the Copyright Office registry to be

1 sure that no one has registered a spurious claim of authorship, on pain of
2 losing their ownership of the copyright three years after the spurious
3 registration. Defendants' interpretation would thus impose on authors an
4 intolerable and unrealistic burden, and would open fertile opportunities for
5 thieves to steal copyrights by simply filing baseless registrations for
6 previously created works.

7 A number of our sister circuits have considered and rejected
8 Defendants' argument that copyright registration triggers the accrual of a
9 claim. In *Gaiman v. McFarlane*, 360 F.3d 644 (7th Cir. 2004), Judge Richard
10 Posner, writing for the Seventh Circuit, asserted, "Authors don't consult the
11 records of the Copyright Office to see whether someone has asserted
12 copyright in their works [I]t is no more the purpose of registration to
13 start statutes of limitations running than it is the purpose of the copyright
14 notice itself to do so." *Id.* at 654–55. The Third Circuit similarly ruled that
15 "[t]he act of registering a copyright does not repudiate co-authorship . . .
16 because co-authors are not expected to investigate the copyright register for
17 competing registrations. . . . [Otherwise, a] challenger to a plaintiff's
18 authorship could surreptitiously apply for copyright registration of the

1 plaintiff's work to start the statute of limitations running and, if the plaintiff
2 did not discover the registration until three years thereafter, the plaintiff's
3 authorship would be nullified." *Brownstein v. Lindsay*, 742 F.3d 55, 71–72 (3d
4 Cir. 2014) ("The act of registering a copyright does not repudiate co-
5 authorship[.]"). See also *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477
6 F.3d 383, 390 (6th Cir. 2007).

7 We recognize that not all courts have reached the same conclusion. In
8 *Saenger Org. v. Nationwide Licensing Ins. Assoc.*, 119 F.3d 55 (1st Cir. 1997), the
9 First Circuit held that a defendant claiming ownership rights as the result of
10 having co-authored a work was time-barred where his claim was asserted
11 more than three years after the plaintiff's registration as the sole author. *Id.* at
12 63–64. The court observed that, under § 205(c), the registration "put the world
13 on constructive notice as to the [plaintiff's] ownership of the copyright and of
14 the facts stated in the registration certificate," and accordingly the defendant
15 "had constructive notice of [the plaintiff's] claim of exclusive ownership of
16 the copyrights." *Id.* at 66. However, the court also relied for its conclusion on
17 the fact that the defendant had actual as well as constructive notice of the
18 plaintiff's claim to sole authorship because the defendant had been present

1 when the plaintiff drafted the copyright registration, and because the
2 defendant had worked with materials that displayed notices attributing sole
3 authorship to the plaintiff. *Id.* at 65–66. Because the First Circuit relied also on
4 actual notice, it is not so clear that it would have deemed an author’s claim of
5 ownership time-barred solely because of another’s registration of a copyright
6 claim more than three years before the suit. In any event, to the extent that
7 mere adverse registration formed the basis of the First Circuit’s ruling, we
8 respectfully disagree. Section 205 generally relates to transfers of title, and
9 each subsection is properly read in that context. *See Gaiman*, 360 F.3d at 655
10 (reasoning that the purpose of § 205(c) is to establish priority in the event of
11 disputes, in bankruptcy court or elsewhere, over creditors’ rights).¹

12 Section 205 does not state that ownership claims filed more than three
13 years after an adverse registration are untimely, nor that a claim of ownership
14 accrues upon an adverse registration. The discovery rule for determining
15 when a claim accrues is itself entirely a common law development. *Chicago*
16 *Bldg. Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 616 (7th Cir. 2014)

¹ *Gaiman* relied for this proposition on *In re World Auxiliary Power Co.*, 303 F.3d 1120 (9th Cir. 2002) and *Broadcast Music, Inc. v. Hirsch*, 104 F.3d 1163 (9th Cir. 1997), which treats the “constructive notice” provision of § 205(c) respectively as a means of establishing priority for security interests and ownership transfers. *See In re World*, 303 F.3d at 1125–26; *Broadcast Music, Inc.*, 104 F.3d at 1165.

1 (“[I]n copyright cases the discovery rule is a common-law gloss.”). And,
2 contrary to what Defendants argue, we have never held that mere
3 registration, without more, is enough to put a reasonably diligent copyright
4 owner on notice of an adverse claim. We join the Circuits that have rejected
5 the Defendants’ reading of § 205(c).

6 CONCLUSION

7 For the reasons stated above, the petition for rehearing is denied.