

# Horror, Inc. v. Miller

## 15 F.4th 232 (2d Cir. 2021)

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### BACKGROUND

Appellee Victor Miller (“Miller”) is a writer and longtime member of the Writers Guild of America, East, Inc. (“WGA”), a nationally recognized labor union supporting film and television writers. Producer Sean Cunningham (“Cunningham”), formerly a close friend of Miller, created Manny, Inc. (“Manny”) to produce and distribute films. In 1978, Manny joined the WGA Theatrical and Television Basic Agreement (“MBA”), a collective bargaining agreement for employers and writers.

In 1979, Cunningham reached out to Miller about an idea for a horror film. The two utilized a WGA standard union form denoting Miller as a WGA member and Manny as an MBA signatory to formalize their roles for the project. The contractual terms stated that Manny employed Miller to produce a screenplay for a prospective film, then titled “Friday 13,” and Manny would pay Miller USD \$5,569 for a first draft and USD \$3,713 for a final draft.

Cunningham later agreed to an arrangement with financier Phil Scuderi, who led Georgetown Productions, Inc. (“Georgetown”) where, in exchange for supporting the film, Cunningham granted Scuderi “complete control over the screenplay and the film.”<sup>1</sup> Notably, Scuderi changed Miller’s final scene and ultimately “gave birth to the character Jason as an immortal adult killer who returned from the dead, and to numerous sequels in the franchise.”<sup>2</sup>

In 1980, Manny transferred the screenplay and film rights to Georgetown which registered the associated copyrights, noting the film as a work made-for-hire authored by Georgetown. The Copyright Office’s digital record credited Miller with writing the screenplay. Horror, Inc. (“Horror”) subsequently obtained the rights, title, and interest to the *Friday the 13th* franchise from Georgetown, which included the Screenplay and Film. On May 9, 1980, the *Friday the 13th* film was released. The franchise has resulted in eleven sequels and related products so far. In 2016, Miller served a copyright termination notice to Manny and Horror, Inc. to recover his copyright.

### PROCEDURAL HISTORY

Plaintiff-Appellants Manny and Horror, Inc. (collectively, the “Companies”) brought an action against Defendant-Appellee Miller in the United

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1. Horror, Inc. v. Miller, 15 F.4th 232, 238 (2d Cir. 2021).

2. *Id.* at 239.

States District Court for the District of Connecticut.<sup>3</sup> The Companies requested a declaration that Miller's copyright termination notices were invalid because he wrote the *Friday the 13th* screenplay within the scope of his employment with Manny as a work-made-for-hire. Miller filed a motion for summary judgment, believing no factual dispute existed and wanting affirmation that independent contractor status granted authorship rights.

Chief Judge Stefan R. Underhill agreed with Miller and granted his summary judgment request, holding that Miller did not write the *Friday the 13th* screenplay as a work-made-for-hire but instead as an independent contractor. The district court determined that Miller retained authorship rights and the ability to nullify the Companies' copyright claims. The Companies then appealed to the United States Court of Appeals for the Second Circuit.

#### ISSUE

Was Miller deemed an employee or an independent contractor under the Copyright Act when he wrote *Friday the 13th*, and does the statute of limitations control the Companies' ability to revoke Miller's termination rights?

#### DECISION

Reviewing the case de novo, Second Circuit Judge Susan L. Carney affirmed the district court's decision, finding that the district court properly granted summary judgment for Miller; reasonably balanced the factors of the *Reid Test*, as provided in the *Community for Creative Non-Violence v. Reid* to determine that Miller was an independent contractor rather than an employee; and correctly determined that no statutory limitations precluded Miller from terminating the Companies' rights when he did.<sup>4</sup>

#### REASONING

First, in addressing whether Miller was considered an employee or an independent contractor when he wrote the screenplay, the Second Circuit disagreed with the Companies' first argument that Miller was "inherently" Manny's employee due to Miller's WGA membership and Manny's status as a WGA employer while preparing the screenplay.

The court reasoned that even if Miller was an employee under labor law, he was not an employee for copyright purposes. Under Section 101 of the Copyright Act, the definition of employment serves to protect authors; the "term 'employee' [under the Copyright Act] should be understood in light of the general common law of agency."<sup>5</sup> This determination of working status for copyright purposes is made by balancing the thirteen non-exhaustive factors provided by the United States Supreme Court in *Reid*.<sup>6</sup> Thus, the district court

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3. *Horror, Inc. v. Miller*, 335 F. Supp. 3d 273, 285 (D. Conn. 2018).

4. *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989).

5. *Id.* at 737-52.

6. *Id.* at 737.

did not err when considering common law and *Reid* factors rather than labor law.

Secondly, the Companies argued that the district court should have considered the existence of a contract (“union membership”) as an additional factor in its *Reid* balancing analysis. The Second Circuit affirmed the district court’s omission of Miller’s union membership as an additional factor, acknowledging that Miller might simultaneously receive employee benefits under labor law and copyright law protections as an independently contracted author.

The Companies claimed that irrespective of its two previous theories, the district court had improperly balanced the *Reid* factors and should have allocated “great weight” to the fact that Miller and Manny were involved with the same union and collective bargaining agreement. The Second Circuit again disagreed, finding the strength of the factors heavily favored Miller. To weigh the factors, the Court looked to *Aymes v. Bonelli*, which indicated that the first five *Reid* factors—control, skill, employee benefits, tax treatment, and additional projects—deserved “greater weight” in the analysis.<sup>7</sup>

The control factor “marginally” weighed in favor of the Companies when considered “in the light most favorable to the Companies” because Cunningham sometimes contributed to the script. The skill factor “indisputably” favored Miller because, despite some contributions by Cunningham, Miller’s professional expertise as a screenwriter birthed the script. The third factor, employee benefits, favored Miller “heavily” because Miller did not receive traditional employee benefits, such as health insurance, from Manny.

The Second Circuit also reasoned that although Miller received residual and sequel payments under the MBA, these were not typical employee benefits. Further, “it would be inequitable for a hiring party to benefit from a worker’s status as an independent contractor ‘in one context’ and then ‘ten years later deny [the worker] that status to avoid a copyright infringement suit.’”<sup>8</sup> It followed that logic again here.

The fourth factor, tax treatment, favored Miller because Manny did not deduct any taxes from payments to Miller, supporting the idea that he was an independent contractor and not an employee. The fifth factor, additional projects, also favored Miller. Manny engaged Miller solely for the horror screenplay project with no right to assign additional projects, characterizing Miller more as an independent contractor than an employee.

The court also found that the lighter *Reid* factors (e.g., business entity, business type, duration, payment method, location of work, discretion in setting schedules, and the source of instrumentalities) indicated Miller was an independent contractor. The Second Circuit reasoned that the initial two factors favored the Companies, the following four favored Miller, and the final two were indeterminable. In balancing the *Reid* factors, the Second Circuit

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7. *Aymes v. Bonelli*, 980 F.2d 857, 861 (2d Cir. 1992).

8. *Id.* at 862.

affirmed the district court's decision to grant summary judgment, having determined that Miller acted as an independent contractor.

Lastly, the Companies argued Miller did not timely terminate their authorship rights according to Section 507(b) of the Copyright Act, which sets a three-year statute of limitations for protesting an express repudiation of authorship. The Companies unsuccessfully described three instances they believed evidenced Miller's awareness that he no longer had authorship rights.

The first instance the Companies highlighted was that, since some of the screenplay drafts bore a cover page with a copyright notice, Miller had sufficient notice of the termination of his own authorship rights almost forty years earlier. The Second Circuit disagreed.<sup>9</sup> The second instance the Companies argued was the fact that Miller had notice of an express repudiation because Miller had denoted Cunningham and Scuderi as "the owners of this thing [*Friday the 13th* franchise]" in an interview in 2003.<sup>10</sup> Nevertheless, the Second Circuit disregarded these general statements about ownership interests as relevant to this case.

Finally, the Second Circuit rejected the Companies' argument that Georgetown's copyright registration form had expressly repudiated Miller's authorship right of termination. The court reasoned that Georgetown's registration listing the Screenplay's copyright as a work made for hire was a rebuttable fact that Miller had successfully rebutted.<sup>11</sup>

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9. *Miller*, 15 F.4th at 257 (noting that a "copyright notice does not identify the author of a work; it merely lists 'the name of the owner of the copyright,'" quoting 17 U.S.C. § 401(b)(3)).

10. *Id.* at 258.

11. *Id.* ("[M]ere registration of a copyright without more' does not suffice to trigger the accrual of an authorship claim," quoting *Wilson v. Dynatone Publ'g Co.*, 892 F.3d 112, 119 (2d Cir. 2018)).