

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK.

THE HILL FOUNDATION, INC.,

Plaintiff,

-against-

CLAYTON F. SUMMY CO.,

Defendant.

(Original)

NOTICE OF MOTION TO AMEND AT  
TRIAL.

SAMUEL MANN,

Attorney for Plaintiff,

70 PINE STREET,  
BOROUGH OF MANHATTAN,  
CITY OF NEW YORK.

4/26/43

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK.

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THE HILL FOUNDATION, INC.,

Plaintiff,

-against-

CLAYTON F. SUMMY CO.,

Defendant.

-----X

NOTICE OF MOTION TO  
AMEND COMPLAINT AT  
THE TRIAL.

S I R S:-

PLEASE TAKE NOTICE that upon the trial of the above-entitled civil cause, the plaintiff will move before the District Judge presiding thereat for leave to amend the amended complaint herein by adding thereto an additional cause of action in form substantially as follows:

FOR A FOURTH CAUSE OF ACTION.

FORTY-FOURTH: Plaintiff repeats and reiterates the allegations contained in the paragraphs of the amended complaint designated "FIRST" to "FOURTEENTH" inclusive.

FORTY-FIFTH: Prior to September 15th, 1939, the defendant herein being then engaged in the business of publishing and selling the books or works mentioned and described in paragraphs "THIRD", "EIGHTH" and "NINTH" of the amended complaint, requested plaintiff's assignors, the said PATTY S. HILL and JESSICA M. HILL, to execute, acknowledge and deliver to it an assignment of their property, right, title and interest in and to the copyrights and present renewals and extensions thereof, which assignment defendant represented it desired solely for the purpose of enabling it to proceed, either by negotiations or by appropriate legal proceedings against four specified infringers

of said copyrights or renewals thereof, and to reopen a certain cause or suit previously instituted in this District Court under the title or caption of "Hill v. Harris"; upon the express representation that said assignment would be limited to the purposes hereinabove alleged and that it should remain in effect for a fixed period of time only, at the expiration of which it should become null and void and all rights therein revert to plaintiff's said assignors.

FORTY-SIXTH: Relying upon said representations and believing them to be true and without having any cause or reason to believe the contrary, plaintiff's assignors aforesaid executed, acknowledged and caused to be delivered to the defendant an instrument in writing wherein and whereby plaintiff's assignors did sell, convey and set over to the defendant herein all their property, right, title and interest in and to the copyrights and renewals thereof mentioned and described in paragraphs "TWELFTH" hereof and in addition the following:

"Good Morning to All" (original United States copyright registration, February 7, 1907, entry #142,468 or #C 142,468; renewal registration, January 2, 1935, renewal registration #34,877 or #R 34,877.

and said defendant received said assignment in trust for the benefit of plaintiff's said assignors and upon the terms and conditions below set forth.

FORTY-SEVENTH: Concurrently with the delivery of the assignment hereinabove set forth defendant delivered to the agent of plaintiff's assignors an instrument executed and acknowledged by it wherein and whereby said defendant acknowledged that said assignment was delivered to it by plaintiff's assignors for the purpose of enabling it to proceed, either by negotiations or by appropriate legal proceedings, against four named infringers and to reopen the suit mentioned and described in paragraph "FORTY-FIFTH" hereof as Hill v. Harris and previously instituted in this District Court.

Said defendant expressly agreed that the terms of said instrument were to be deemed incorporated in and made part of the assignment delivered to it as aforesaid; that all rights in respect to said copyrights, renewals and extensions thereof not expressly granted by defendant's said agreement or by prior assignments were reserved to plaintiff's said assignors; or if it should fail within one year from the date of the delivery to it of the aforesaid assignment to take action either by suit or negotiation against the four infringers named therein; that then and at the option of plaintiff's said assignors said assignment was to be declared null and void and of no further effect either at law or in equity, and thereupon said assignment was to be deemed cancelled and revoked, but that said defendant should nevertheless continue to remain liable to plaintiff's said assignors for all net proceeds received by it or on its behalf prior to such cancellation, and to pay over to plaintiff's assignors their pro rata share thereof. Said agreement further provided that all of the terms, covenants and conditions therein contained should enure to the benefit of and be enforced by the heirs, legal representatives or assigns of plaintiff's assignors.

FORTY-EIGHTH: Thereafter and prior to the expiration of the said one-year term of said agreement, defendant by its attorneys requested an extension of time for a further period of ninety days from September 15th, 1940, within which to proceed in the manner contemplated by said agreement against said infringers; and by mutual consent of the parties to said agreement the term of the assignment above described was extended for a period of ninety days from September 15th, 1940, and modified to the extent of including therein two additional alleged infringers, but except as so modified all the remaining terms and provisions were to continue in full force and effect as therein set forth. At the expiration of said ninety-day extension of

time the defendant by its attorneys requested and obtained from plaintiff's assignors a second extension of time for a period expiring February 28th, 1941, upon the same terms and conditions hereinabove set forth.

FORTY-NINTH: Upon information and belief said defendant caused said assignment of copyrights to be recorded in the Copyright Office of the United States of America in liber 425 at pages 36-38 on the 21st day of September, 1939; and that said assignment has ever since the date of recording thereof remained on record in said Copyright Office of the United States of America.

FIFTIETH: That subsequent to February 28th, 1941, plaintiff's assignors by their attorney informed defendant by its attorneys that said assignment would be deemed null and void and of no further force and effect and that all rights conferred thereby were at an end and revested in plaintiff's said assignors; of all of which said defendant had due notice.

FIFTY-FIRST: That at the time of the commencement of this action, in August, 1942, neither plaintiff's assignors nor this plaintiff were informed by the defendant nor did they have any reason to believe that said assignment had been recorded in the aforesaid Copyright Office of the United States of America, nor did they discover the fact that said assignment was on record until about the 12th day of April, 1943, in consequence of a certain action brought in this District Court by the plaintiff herein as plaintiff against POSTAL TELEGRAPH-CABLE COMPANY as defendant, and in which action said defendant, POSTAL TELEGRAPH-CABLE COMPANY, set up as a defense, among others, the existence of said assignment and that the records of the said Copyright Office disclosed no subsequent assignment from the defendant herein to plaintiff's assignors and that by reason thereof the plaintiff was without title to maintain said action against said defendant, POSTAL TELEGRAPH-CABLE COMPANY.

FIFTY-SECOND: That immediately upon discovering the existence of said assignment, plaintiff made due demand upon defendant by its attorneys that said defendant execute and deliver a reassignment of said assignment with the least possible delay so that the purpose and intent of the collateral agreement above mentioned and described could be carried out and at the same time to enable plaintiff to strike out the defense, among others, asserted by the aforesaid POSTAL TELEGRAPH-CABLE COMPANY; but said defendant refused and continues to refuse so to do without just cause or reason in law or in equity and wrongfully and inequitably continues to assert ownership of said assignment.

FIFTY-THIRD: That by reason of this defendant's wrongful and inequitable conduct, plaintiff was compelled to retain and in fact did retain counsel to institute this action to procure the execution under a decree of this Court and a delivery to plaintiff's assignors or to this plaintiff of a reassignment of the defendant's purported right, title and interest in and to said copyrights and renewals thereof, or a cancellation thereof; and in addition plaintiff has sustained damages in the sum of one thousand (\$1,000.00) dollars by reason of such wrongful and inequitable conduct on the part of this defendant.

FIFTY-FOURTH: Plaintiff has no adequate remedy at law.

FIFTY-FIFTH: Plaintiff repeats and reiterates the allegations contained in the paragraph of the amended complaint designated "TWENTY-SECOND" with the same force and effect as if set forth at length herein.

WHEREFORE plaintiff demands judgment that the defendant be decreed to execute and deliver in due form for recording a reassignment of its purported right, title and interest

in and to the aforesaid copyrights to the plaintiff herein; that the defendant be decreed to deliver into Court for cancellation the assignment executed and delivered to it by plaintiff's assignors on September 15th, 1939; that the plaintiffs be awarded the sum of one thousand (\$1,000.00) dollars damages sustained by it in consequence of the defendant's wrongful and inequitable conduct; and that the plaintiff have such other further and different relief as to the Court may seem just, equitable and proper in the premises.

PLEASE TAKE FURTHER NOTICE that upon the trial of the above-entitled action plaintiff herein will move to amend paragraph "THIRTY-SECOND" of the amended complaint to the following extent:

THIRTY-SECOND: The aforesaid MILDRED J. HILL died intestate on June 5th, 1916, a resident of Louisville, Kentucky, leaving her surviving as her sole heirs and next of kin three sisters, the above mentioned PATTY S. HILL and JESSICA M. HILL, MARY HILL who died intestate in September, 1916, and a brother, WILLIAM WALLACE HILL, all of whom were of full age at the date of the death of the said MILDRED J. HILL.

PLEASE TAKE FURTHER NOTICE that the plaintiff will move upon the trial of the above entitled action to amend subdivision "h" of the prayer for judgment in the following respects:

h) That the plaintiff may have such other further and different relief during the pendency of this action and upon the trial hereof as to the Court may seem just, proper and equitable, together with the costs and disbursements of this action and an allowance by way of attorney's fees under the equity powers of this Court.

Dated at New York City, April 26th, 1943.

THE NATIONAL ARCHIVES COLLEGE PARK, MARYLAND  
20540  
REF ID: A63888

Yours, etc.,

SAMUEL MANN,  
Attorney for Plaintiff.

To:

BEEKMAN, BOGUE, STEPHENS & BLACK, ESQS.,  
Attorneys for Defendant.