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Judge Allows 'Olympus Has Fallen' Writer Lawsuit to Continue (Exclusive)

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UPDATED: John S. Green can move forward on claims he was robbed of co-authorship of the hit terrorism-in-the-White House film.

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Film District

"Olympus Has Fallen"

The last chapter has not been written on *Olympus Has Fallen*, the film starring **Gerard Butler** as the man who saves the president from kidnappers after a terrorist attack on the White House.

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The movie was released in March by Film District and has grossed nearly \$100 million in domestic box office, but behind the scenes, an interesting fight has broken out over between two writers who claim credit for the film.

Creighton Rothenberger, the film's credited screenwriter, first filed a lawsuit seeking a declaration that he is the sole author. But it was the counterclaims made by his former partner **John S. Green** that provided the juice for a California federal judge's ruling on Monday.

Judge **Josephine Staton Tucker** has denied Rothenberger's motion to dismiss Green's counterclaims, and in doing so, sets the stage for a forthcoming exploration on the nature of creative writing partnerships.

Olympus Has Fallen had been gestating since May

2002, when Rothenberger and Green together discussed a movie about terrorists taking over the White House. The two are said to have traveled to Washington D.C. to walk the perimeter of what was then **George W. Bush's** home and get started on writing a treatment.

Green claims it was his idea to call the film, "Olympus Has Fallen."

A 41-page treatment was registered by the pair with the WGA that year, but when the screenplay was finished the following year, it didn't sell. The project languished until 2009 when the two began working on it again. Then it was set aside again until 2011 when Rothenberger claims he found a new manager and the Gersh Agency agreed to represent him.

In 2012, the screenplay for *Olympus Has Fallen* was completed and it then sold, but Rothenberger allegedly failed to disclose that Green had been a co-author. Green's counterclaims sought a declaration of copyright co-ownership, an accounting between copyright co-owners, breach of partnership agreement and breach of fiduciary duty.

In a motion to dismiss, Rothenberger sought to have the claims of copyright co-ownership barred under the three-year statute of limitations since a 2002 copyright registration failed to list Green. Rothenberger says this put Green on notice that he expressly repudiated co-ownership more than a decade ago.

Throughout the years, there have been many famous legal battles involving creative partnerships — perhaps none more famous than [the war that broke out](http://www.hollywoodreporter.com/tbt-cs4/spawn-comic-book-todd-mcfarlane-neil-gaiman-386071) (<http://www.hollywoodreporter.com/tbt-cs4/spawn-comic-book-todd-mcfarlane-neil-gaiman-386071>) between **Todd McFarlane** and **Neil Gaiman** over *Spawn*.

In fact, that case informs Judge Tucker's ruling ([read in full here](http://www.critid.com/dos/141532854/Olympus/) (<http://www.critid.com/dos/141532854/Olympus/>)) to allow Green to go forward with his claims. As the 7th Circuit Court of Appeals once ruled, "Authors don't consult the records of the Copyright Office to see whether someone has asserted copyright in their works."

The judge says that mere failure to list a name on copyright registration records isn't enough to rise to repudiation and start the clock on when Green had to assert his claim.

"Green has alleged some facts supporting his argument Rothenberger 'lulled' him into believing that Rothenberger was treating Green as a co-author," adds Judge Tucker. And if Rothenberger has other arguments besides the copyright registration, "the pleadings stage is not the time to resolve the inherently factual inquiry of when Rothenberger 'communicated' to Green his express repudiation."

As to the cross-claim of breach of partnership agreement, Rothenberger argued that Green failed to

allege sufficient material terms to constitute an enforceable contract. But the judge highlights an alleged intention to share profits. And as for what the judge says are "purported deficiencies" like the duration of the agreement, the judge says a fact-finder will determine "whether an oral partnership contract existed and, if so, what was the reasonable period implied for the partnership's continuance."

So the case goes forward and could hold some interesting implications.

As **Ed McPherson**, the attorney for Green, tells *THR*, "The one thing the studio does not seem to understand is that, if our client wins, he has the same right to transfer sequel rights as Rothenberger, and he certainly does not have to sell it to them."

Green is represented by McPherson and **Tracy Rane** at McPherson Rane. Rothenberger is being represented by **Michael Weinsten and David Jonelis** of Lavelly & Singer.

The case is still in its early stage and in a motion to dismiss, a judge is obligated to infer facts in favor of the litigant who is alleging them.

"Green's claim to co-authorship is ludicrous," responds Weinsten. "To be an author, you actually have to write something. My client wrote the treatment and the script, as evidenced by the copyright registration in 2003 which Green never contested."

Weinsten adds, "Green is an opportunist who sat in the shadows for ten years while my client worked tirelessly writing and rewriting this script and pitching it to studios. My client wrote nearly twenty drafts of the script between 2003 and 2012, and was then hired by the studio to again rewrite it after it sold. Green's name does not appear on any of those drafts, and there's no dispute my client shared many of them with Green- who was his friend not his business partner."

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