

FILED
IN CLERKS OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MASSACHUSETTS
BOSTON DIVISION

2008 JAN 22 P 12: 54

U.S. DISTRICT COURT
DISTRICT OF MASS.

SONY UMG MUSIC
ENTERTAINMENT,
ET AL

LEAD CASE NUMBER:

03CV11661NG

Plaintiffs,

JOEL TENENBAUM,

ORIGINAL CASE NUMBER:

Defendant

03CV11446NG

DEFENDANT JOEL TENENBAUM'S
RESPONSE TO PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR SANCTIONS

Defendant responds to Plaintiffs' Response to his Motion for Sanctions under 28 U.S.C. 1927 ("Motion" and respectfully requests that Defendant's Motion be allowed in its entirety. The Motion has merit and is based on a clear understanding of the precise intent of 28 U.S.C. Section 1927 ("Section 1927") and the facts of this case.

BACKGROUND

Plaintiff's pre-litigation allegedly identified Defendant as the infringer of Plaintiff's copyrighted sound recordings. Defendant has not, and cannot, however, be found to have distributed over 800 sound recordings through a Cox Communications, Inc., Internet account on August 10, 2004, as is stated in Plaintiff's Response to Defendant's Motion for Sanctions.

Defendant Joel Tenenbaum has attempted to resolve the claims made against him prior to Plaintiffs' filing this lawsuit. Within weeks of being contacted in August, 2004, Defendant sent a check to Plaintiffs' offering to settle the matter. In Plaintiffs' Response to Defendant's Motion to Sanctions, the

Attorney for the Plaintiffs states that Plaintiffs offered to settle the case for \$4500. They later made an offer to settle this case for \$4,000.00. Throughout this time frame, Defendant was also attempting to settle this matter by offering, after several proposed lower settlement offers, a sum of \$3,000.00. This offer was made in an attempt to settle a matter that has been unsettled for over three years. This offer was made with the knowledge of numerous other settlements that have taken place out of court that have settled for the \$3,000 amount. See Exhibit 1 attached. In addition, Defendant has made it clear in attempting to negotiate a settlement since August, 2004, that he is a college student, and has limited income and limited assets. Defendant Joel Tenenbaum has made this \$3,000 offer in good faith. He is aware of his limited financial resources, and does not wish to be forced into bankruptcy due to an unreasonable and unaffordable outcome of this litigation. Defendant Joel Tenenbaum has made this position clear to Plaintiffs' since August, 2004. In Plaintiffs' Response to Defendant's Motion for Sanctions, Plaintiffs' lawyer states "Plaintiffs also made clear to Defendant that if they were required to respond to his November 23, 2007 Motions, the settlement offer would increase to reflect the time spent preparing motions." During that time just prior to Defendant filing the Motion for Sanctions, he made it clear to the Plaintiffs' lawyer that if she chose to respond to his November 23, 2007, Motions, and decline his settlement offer of \$3000.00, that she would only be unnecessarily driving up the cost of settlement. Since Defendant's final settlement offer of \$3,000 is based on his foreseeable ability to pay this settlement offer, knowledge of Plaintiffs' accepting numerous settlements for this same amount of money, and Defendant so stating his inability to pay more than that amount, it is therefore unreasonable, and unconscionable, and amounts to the vexacious conduct specifically mentioned in 28 U.S.C. Section 1927 that Plaintiffs' lawyer would deliberately decline Defendant's offer of settlement and choose instead to drive up the costs of litigation by filing responses to Defendant's Motions

ARGUMENT

Section 1927 provides that the court may require any attorney who "so multiplies the proceedings in any case unreasonable and vexatiously" to pay as a sanction the excess costs, expenses, and attorneys' fees reasonable incurred because of such conduct. Plaintiffs' attorney alleges in her Response that this Defendant believes that Plaintiffs' refusal to lower their settlement amount from \$4,000 to \$3,000 is a

violation of Section 1927. Defendant does not believe nor did he argue in filing the Motion for Sanctions under 28 U.S.C. 1927, that their refusal to lower their settlement amount is a violation of Section 1927. Defendant specifically stated in his Motion for Sanctions that he cannot conceive of a practical and ethical reason for Plaintiffs' lawyer, representing five major corporations, to continue with litigation, time-consuming, and therefore, "Plaintiffs also made clear to Defendant that if they were required to respond to his November 23, 2007 Motions, the settlement offer would increase to reflect the time spent preparing responses." Defendant made it clear to Plaintiffs' lawyers that he had no intention of "requiring" Plaintiffs' lawyer to respond to his November 23rd, 2007, motions. Defendant was, once again, stating that his offer of \$3,000 was reasonable given the number of hours that he knew it would take for Plaintiffs' lawyer to respond to all of these papers, and the unreasonable and unlikely outcome of Plaintiffs financially benefiting in any way from Plaintiffs' lawyer responding to these Motions given Defendant's statement on numerous occasions in telephone calls, in Court papers, and in correspondence sent to Plaintiffs' counsel, that Defendant would have to file for bankruptcy given his limited financial resources. Given this stated information, Defendant cannot conceive any practical, logical or rational reasons for Plaintiffs' attorney to spend innumerable hours of expensive legal billing time responding to these numerous motions, which would increase her attorney's fees, which would greatly increase the only choice that Defendant would have, i.e. to file for bankruptcy, and Plaintiffs and Plaintiffs' attorney receiving nothing

Defendant understands that Plaintiffs' are under no duty to settle this case. Defendant is merely trying to state that Plaintiffs' attorney's actions in responding to these Motions given the difference of \$1,000 to settle the matters, and the countless billable hours to respond to these Motions, is "...unreasonable and vexatious", the specific language of 28 U.S.C. 1927, and the precise conduct that the statute aims to curtail by imposing sanctions against Plaintiffs' counsel.

Defendant clearly understands the potential liability he faces for the alleged infringement of Plaintiffs' copyrighted sound recordings. Defendant is well aware of the statutory damages under the Copyright Act 17 U.S.C. Section 504(c). In addition, Defendant is aware that the Copyright Act provides for an award of costs and attorneys fees under 17 U.S.C. Section 505. Defendant is also aware, that Plaintiffs have to prove any infringement by Defendant, that any further court proceedings and litigation will merely drive up the court costs and attorneys fees, will take up extraordinary amount of Federal Court

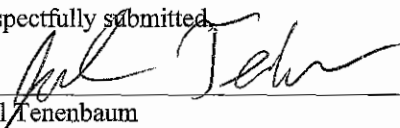
time, and therefore has the potential of "Defendant facing potential liability far greater than Plaintiffs' settlement offers. Defendant is also aware, and has also made Plaintiffs' attorney aware on numerous occasions, that all of this litigation, damage awards, etc., with the potential to drive up the final cost to Defendant, will only have the effect of forcing Defendant to file bankruptcy. Since Defendant has made this information known to Plaintiffs' on numerous occasion over the course of several years, it is because of this that Defendant believes that Plaintiffs' conduct "so multiplies the proceedings in any case unreasonably and vexaciously, and therefore, qualifies for sanction under 28 U.S.C. 1927. This statute specifically is meant to stop lawyers from "making a mountain out of a molehill" or "squeezing blood out of a turnip" in what seems an effort to success in driving up attorneys' fees without any reasonable basis.

In addition to the above reasons that Defendant believes that his Motion for Sanctions should be allowed Defendant is aware that Plaintiff filed her response to Defendant's Motion for Sanctions nearly a week after the Plaintiffs' Response was due, and should, therefore, not be allowed.

CONCLUSION

For all of the above reasons, Defendant respectfully requests that the Court allow his Motion for Sanctions in its entirety

Respectfully submitted,



Joel Tenenbaum
Pro Se
1666 Commonwealth Avenue
Brighton, MA 02135

Dated: January 17, 2008

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been mailed to all Attorneys of record on the ____ day of January, 2008, addressed as follows:

JOHN R. BAUER
Robinson and Cole. LLP
One Boston Place
Boston, MA 02108



JOEL TENENBAUM