

JOEL TENENBAUM


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August 18, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SONY BMG MUSIC ENTERTAINMENT ,
a Delaware general partnership; WARNER
BROS. RECORDS, INC., a Delaware
Corporation, ATLANTIC RECORDING
CORPORATION, a Delaware corporation,
ARISTA RECORDS LLC, Delaware limited
Liability company; and UMG RECORDINGS,
INC., a Delaware corporation,

Plaintiffs

Vs.

JOEL TENENBAUM,

Defendant.

CIVIL ACTION NO: 1:07-CV-11446NG

Lead 03cv11661NG

AMENDED ANSWER AND COUNTERCLAIM

- (1) Defendant is filing a Counterclaim against the Plaintiffs for Abuse of Process under Mass. R. Civ. P. 12(b)(6) and Mass. Gen. Laws, Ch. 231 Section 6(f)

“To constitute a cause of action for abuse of process, it must appear that the process was used to accomplish some ulterior purpose for which it was not designed or intended which was not the legitimate purpose of the particular process employed which resulted in damages.” Quaranto vs. Silverman, 345 Mass 423, 426, (1963)

In Anderson vs. Atlantic, 2008 WL 18506, the Defendant is suing the Plaintiffs for malicious prosecution under similar circumstances to this Defendant's case. "MediaSentry has for years conducted illegal, flawed and negligent investigation...then used as sole basis for pursuit of...lawsuits." Id.

A District Court may exercise supplemental jurisdiction over a state law claim whenever the state and federal claims "...derive from a common nucleus of operative fact so that the Plaintiffs would ordinarily be expected to try them all in one judicial proceeding." United Mine Workers vs. Gibbs, 383 U.S. 715, 726 (1966)

Therefore, a Massachusetts State cause of action for abuse of process is appropriately treated as pendant jurisdiction to the pending Copyright Law Infringement cases.

A District court may exercise supplemental jurisdiction over a state law claim whenever the state and federal claims "Derive from a common nucleus of operative fact" so that the Plaintiff would ordinarily be expected to try them all in one judicial proceeding." United Mine Workers vs. Gibbs, 383 U.S. 715, 726, (1966)

The facts in this case demonstrate that the process by which Plaintiffs have conducted their illegal, flawed and negligent investigations to use as a basis for pursuit of this and similar lawsuits, and was not used for legitimate, honorable purposes. See 2008 Anderson vs. Atlantic, WL 185806.

Defendant has been harassed, inconvenience, and suffered emotional distress to himself and to his family due to the malicious, unnecessary, punitive nature of this litigation. In addition, Defendant and his family have endured financial hardship, and loss of income totaling thousands and thousands of dollars due to an inability to work due to both emotional distress as well as the unlimited extraordinary number of hours put in by both Defendant and his mother in an effort to respond to the menacing, intimidating, harassing papers filed against the Defendant. This caused a disruption in Defendant's mother's business resulting in an extraordinary loss of income to mother helping her son in this matter rather than pursuing her own business. This litigation was filed by Plaintiffs in August, 2007, but has been an ongoing amount of harassment, research, telephone calls, etc., etc., for three years prior to the filing of this litigation, for a total of four years harassment, emotional distress, and numerous other efforts of the part of the Plaintiffs' attorneys to harass, persecute, cause undue stress, intimidation, all with disregard by the Plaintiffs' attorneys to the facts in this particular case which have no merit, and only with the purpose of harassment, intentional infliction of emotional distress.

(2) Due to the nature and the scope of the actual time, materials, costs, emotional distress loss of income, defendant seeks damages to reimburse him and his family for the irreparable injuries caused to the defendant and his family. The damages and injuries caused to Defendant and his family are far in excess of any actual damages that any or all of the Plaintiffs have suffered.

The function of the adversarial system, is to provide relief to people who have been harmed. They may sue. Band's Refuse v. Fairlawn, 62 N.J.Super 522 (1960)

(2) Defendant's Counterclaim is that the Copyright Act, 17 U.S.C Section 106(3) was not intended to allow grossly, excessive punitive damages under its law if these statutory damages are in excess of the actual damages suffered.

In a recent case, UMG vs. Lindor, 2006 WL 3335048, Judge David Trager stated that a "Court

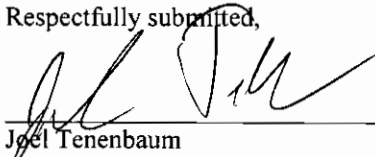
may extend its current due process jurisdiction prohibiting grossly excessive punitive jury awards to prohibit the award of statutory damages mandated under Copyright Act if they are grossly in excess of the actual damages suffered.” .

In not one, single, solitary pleading, document, exhibit, etc., have Plaintiffs mentioned in any way, shape or form that they have suffered any damages. In fact, the amount of damages suffered by Defendant are far in excess of any possible damages that Plaintiffs suffered, if they suffered any damages at all. Any award of any amount of statutory damages that would approach the amount of damages that RIAA alleges that it is entitled to under the Copyright Law, would clearly be unconstitutional and excessive, particularly since the Plaintiffs cannot demonstrate that they were in any way damaged unlike the Defendant who has been and continues to be damaged both monetarily and emotionally by the ongoing, continuous nature of this litigation and all that proceeded it for four years, or longer. “The concern of the court is that in these lawsuits, potentially meritorious legal and factual defenses are not being litigated, and instead, the federal judiciary is being used as a hammer by a small group of Plaintiffs’ to pound settlement out of a small group of unrepresented defendants.” Hon S. James Otero, Elecktra vs. O’Brien, 2007 ILRWeb (P and F_1555.

“The function, scope and purpose of the Federal Rules of Civil Procedure are designed to serve the just, speedy and inexpensive determination of every action” Bands Id.

Therefore, the Defendant asks that the Court award damages to Defendant and asks the Court to impose sanctions, damages, etc., which are calculated to keep this mess from every happening again to any one else.

Respectfully submitted,



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Dated: August 18, 2008