

# **EXHIBIT 12**

Not Reported in F.Supp.2d, 2000 WL 622612 (E.D.La.), 2000 Copr.L.Dec. P 28,107, 54 U.S.P.Q.2d 1871  
(Cite as: 2000 WL 622612 (E.D.La.))

## H

United States District Court, E.D. Louisiana.  
Joseph JOHNSON, et al.  
v.  
TUFF N RUMBLE MANAGEMENT, INC., et al.  
**No. Civ.A. 99-1374.**  
May 15, 2000.

### ORDER AND REASONS

VANCE, J.

\*1 Before the Court are the motions of plaintiffs, Joseph Johnson and Wardell Quezergue, for summary judgment and Rule 11 sanctions against defendant, Joe Jones d/b/a Melder Publishing Co. For the following reasons, plaintiffs' motions are GRANTED.

#### I. BACKGROUND

This copyright infringement case involves the rights to a song entitled *It Ain't My Fault*. Plaintiffs, Joseph Johnson and Wardell Quezergue, claim that they are the sole composers and copyright owners of the song. (See Pls.' Mot. Summ. J. Ex. B, Quezergue Aff.; Ex. C., Johnson Aff.) Quezergue registered a copyright to *It Ain't My Fault* with the United States Copyright Office on June 22, 1964. (See Def.'s Opp'n Mot. Summ. J. Ex. 7.) On the copyright application, Quezergue listed himself and Johnson as the authors and copyright owners of the song. (See *id.*) Plaintiffs attest that they never assigned any of their interest in the copyright of the song to Jones, Melder Publishing, or any other entity, firm or corporation owned by Jones. (See Pls.' Mot. Summ. J. Exs. B & C.) Jones, appearing herein pro se, claims a 50% ownership of the song by transfer from Johnson.

The dispute between plaintiffs and Jones arises out

of a Power of Attorney signed by Johnson on April 14, 1992, in which Johnson granted Jones power of attorney in all matters connected with the use of *It Ain't My Fault*. (See Def.'s Opp'n Mot. Summ. J. Ex. 1.) On December 29, 1992, Jones, as Johnson's "authorized agent," filed a copyright registration to *It Ain't My Fault* in the name of Smokey Johnson Publishing Co. & Melder Publishing Co. (See *id.* Ex. 4.) The registration completed by Jones and the certificate issued by the U.S. Register of Copyrights list Johnson and Quezergue as the authors of the song and indicate that Smokey Johnson Publishing & Melder Publishing had obtained ownership of the copyright "by written agreement." (See *id.* Exs. 3 & 4.) On December 30, 1992, Jones filed two copyright renewals relative to the 1964 and the 1992 registrations. (See *id.* Exs. 5 & 8.) Both renewal documents identify Johnson and Quezergue as authors and Joseph Johnson c/o Melder Publishing and Wardell Quezergue c/o Melder Publishing as copyright owners of *It Ain't My Fault*. (See *id.* Exs. 5 & 8.) One of the renewal certificates states that the original copyright registration was made in published form on August 1, 1964, while the other states that the original registration was made in unpublished form on June 22, 1964. (See *id.* Exs. 5 & 8.) Plaintiffs now move for summary judgment on the grounds that no genuine issue of fact exists as to whether Jones owns a copyright interest in *It Ain't My Fault*. Specifically, plaintiffs argue that Jones has failed to produce a valid written assignment as required to establish his ownership under federal copyright law. Plaintiffs also move for sanctions against Jones, arguing that his memoranda submitted in opposition to the summary judgment motion violate [Rule 11 of the Federal Rules of Civil Procedure](#). Jones opposes both motions.

#### II. DISCUSSION

##### A. Summary Judgment

###### 1. Legal Standard

\*2 Summary judgment is appropriate when there are no genuine issues as to any material facts, and the moving party is entitled to judgment as a matter of law. See [FED. R. CIV. P. 56\(c\)](#); see also [Celotex Corp. v. Catrett](#), 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552 (1986). A court must be satisfied that no reasonable trier of fact could find for the non-moving party or, in other words, “that the evidence favoring the nonmoving party is insufficient to enable a reasonable jury to return a verdict in her favor.” [Lavespere v. Niagara Mach. & Tool Works, Inc.](#), 910 F.2d 167, 178 (5<sup>th</sup> Cir.1990), *abrogated on other grounds by* [Little v. Liquid Air Corp.](#), 37 F.3d 1069 (5<sup>th</sup> Cir.1994) (citing [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 249, 106 S.Ct. 2505, 2511 (1986)). The moving party bears the burden of establishing that there are no genuine issues of material fact.

If the dispositive issue is one for which the non-moving party will bear the burden of proof at trial, the moving party may satisfy its burden by merely pointing out that the evidence in the record contains insufficient proof concerning an essential element of the nonmoving party's claim. See [Celotex](#), 477 U.S. at 325, 106 S.Ct. at 2554; see also [Lavespere](#), 910 F.2d at 178. The burden then shifts to the non-moving party, who must, by submitting or referring to evidence, set out specific facts showing that a genuine issue exists. See [Celotex](#), 477 U.S. at 324, 106 S.Ct. at 2553. The nonmovant may not rest upon allegations and denials. See *id.* at 324, 106 S.Ct. at 2552.

## 2. Assignment of Copyright

To prevail on a copyright infringement claim, plaintiffs must prove that they own a valid copyright, and that defendants impermissibly copied or otherwise infringed upon that copyright. See [Quintanilla v. Texas Television Inc.](#), 139 F.3d 494, 500 (5<sup>th</sup> Cir.1998) (citing [DSC Communications Corp. v. DGI Techs., Inc.](#), 81 F.3d 597, 600 (5<sup>th</sup> Cir.1996)). All of the copyright registration and renewal certificates in the record, including those

filed by Jones, state that Johnson and Quezergue authored *It Ain't My Fault*. Accordingly, the Court finds that ownership of the copyright vested initially with plaintiffs as the song's authors. See 17 U.S.C. § 201(a).

Jones asserts that he obtained a copyright interest in *It Ain't My Fault* by virtue of a transfer of ownership from Johnson. The Copyright Act permits a copyright owner to transfer his ownership in whole or in part. See 17 U.S.C. § 201(d). However, “[a] transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is *in writing* and signed by the owner of the rights conveyed or such owner's duly authorized agent.” *Id.* § 204(a) (emphasis added). The writing requirement “ensures that the creator of a work will not give away his copyright inadvertently.” [Effects Assocs., Inc. v. Cohen](#), 908 F.2d 555, 556-57 (9<sup>th</sup> Cir.1990).

\*3 Plaintiffs argue that no genuine issue of fact exists as to whether Jones owns a copyright interest in *It Ain't My Fault* because Jones has failed to produce a valid written assignment transferring the copyright from plaintiffs to Jones. Johnson and Quezergue attached affidavits to their summary judgment motion stating that they are the sole composers and copyright owners of *It Ain't My Fault*. (See Pls.' Mot. Summ. J. Exs. B & C.) Further, they aver that they never assigned any of their copyright interest in the song to Jones, Melder Publishing Co., or any other entity owned by Jones. (See *id.*)

### a. Plaintiffs' Request for Admissions Deemed Admitted under Rule 36

Plaintiffs assert that Jones' failure to respond to Requests for Admissions regarding the existence of an alleged written assignment warrants summary judgment in their favor pursuant to [Federal Rule of Civil Procedure 36](#). On December 21, 1999, plaintiffs mailed to Jones a Request for Production of Documents, Interrogatories and Admissions, by

both certified and first class mail. (*See id.* Ex. D, Apken Aff.) The Request for Admissions notified Jones to respond within thirty days pursuant to [Rule 36](#). Among other requests, plaintiffs asked Jones to admit or deny that he does not have a signed assignment of copyright from Quezergue, Johnson or Smokey Johnson Publishing relating to *It Ain't My Fault*. (*See* Pls.' Mot. Summ. J. Ex. E, Request for Admissions Nos. 16 & 18.) Plaintiffs also asked Jones to produce any and all assignments of copyright in the song. (*See id.* Request for Production, at 2.) A review of the record indicates that Jones has not yet responded to these requests. Plaintiffs allege that the certified mail was returned marked "refused." (*See* Pls.' Mem. Supp. Summ. J., at 2.)

[Rule 36\(a\)](#) gives a party served with requests for admissions thirty days in which to respond. If the party to whom the request is directed does not answer or object to the admissions within that time period, the matter is deemed admitted. *See* [FED. R. CIV. P. 36\(a\)](#). [Rule 36\(b\)](#) adds that "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." The conclusive effect of [Rule 36\(b\)](#) "applies equally to those admissions made affirmatively and those established by default, even if the matters admitted relate to material facts that defeat a party's claim." *American Auto. Ass'n v. AAA Legal Clinic of Jefferson*, 930 F.2d 1117, 1120 (5<sup>th</sup> Cir.1991) (citations omitted).

Here, Jones has still not responded to plaintiffs' Requests for Admissions, more than four months after plaintiffs mailed them to him. Further, Jones has not moved this Court to withdraw the admissions pursuant to [Rule 36\(b\)](#). Jones avers that he did not receive or refuse any mail from plaintiffs, and that he first received the Request for Admissions as an attachment to plaintiffs' summary judgment motion. Jones also asserts that he was in the hospital when the mail was allegedly refused. These arguments do not prevent the admission of the matters requested under [Rule 36](#). When the record demonstrates that the request for admissions was mailed to the party's

last known street address in accordance with [Federal Rule of Civil Procedure 5\(b\)](#), the failure to receive a request will not prevent summary judgment based thereon. *See In re Mack*, 330 F.Supp. 737, 738 (S.D.Tex.1970) (citations omitted). The Court finds no reason to disregard the affidavit of Vera Apken, certifying that she mailed the Request for Admissions to Jones on December 21, 1999 at his last known street address in California. (*See* Pls.' Mot. Summ. J. Ex. D.) The Court therefore deems admitted all of the matters raised in plaintiffs' Request for Admissions dated December 29, 1999.

\*4 It is well established that admissions, including matters deemed admitted as a result of a party's failure to respond to a request for admission, may form the basis for granting summary judgment. *See Dukes v. South Carolina Ins. Co.*, 770 F.2d 545, 548-49 (5<sup>th</sup> Cir.1985); *Simien v. Chemical Waste Mgmt., Inc.*, 30 F.Supp.2d 939, 942 (W.D.La.1998) (*citing United States v. Kasuboski*, 834 F.2d 1345, 1350 (7<sup>th</sup> Cir.1987)); *Mack*, 330 F.Supp. at 738 (*citing Moosman v. Joseph P. Blitz*, 358 F.2d 686 (2d Cir.1966); *Carter v. Aramco Services Co.*, 1988 WL 38796, at \*2 (S.D. Tex. April 15, 1988). Because the admissions establish that Jones does not have a signed assignment of copyright in *It Ain't My Fault* from Quezergue, Johnson or Smokey Johnson Publishing, no genuine issue of fact exists as to whether Jones owns a copyright interest in the song.

#### b. No Valid Written Assignment

Even without considering the [Rule 36](#) admissions, the Court finds that summary judgment is appropriate here because Jones has failed to produce any credible summary judgment evidence to rebut plaintiffs' sworn testimony that they did not assign a copyright interest in *It Ain't My Fault* to Jones or any entity under his control. Jones claims to have obtained rights to the published version of the song by virtue of a written assignment from Johnson. In his initial opposition to plaintiffs' summary judgment motion, Jones suggests that because he re-

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gistered and renewed a copyright in the published version of the song as Johnson's duly authorized agent, a genuine issue exists as to his ownership interest.

Copyright ownership and registration are separate and distinct issues. See *Arthur Rutenberg Homes, Inc. v. Drew Homes, Inc.*, 29 F.3d 1529, 1531 (11<sup>th</sup> Cir.1994) (citing 17 U.S.C. § 408(a)). “Copyright inheres in authorship and exists whether or not it is ever registered.” *Id.* Jones suggests that his registration and renewal of the copyright in *It Ain't My Fault* on December 29 and 30, 1992 establish that he owns an interest in the song's copyright. It is true that a certificate of registration from the U.S. Register of Copyrights constitutes *prima facie* evidence of the validity of a copyright. See 17 U.S.C. § 410(c). However, the statutory presumption of copyright validity codified at Section 410(c) of the Copyright Act applies only to certificates of registration made before or within five years after first publication of the work. See *id.* As to works published more than five years before registration, the automatic presumption does not apply, and the Court has discretion to determine what weight to give the copyright registrations. See *Religious Technology Ctr. v. Netcom On-Line Communication Servs., Inc.*, 923 F.Supp. 1231, 1241 (N.D.Cal.1995) (citing 3 Melville B. Nimmer & David Nimmer, NIMMER ON COPYRIGHT §§ 12.11[A], [B] ). Here, the certificate of registration issued to Smokey Johnson & Melder Publishing by the U.S. Register of Copyrights on December 30, 1992 indicates that the work was first published on August 1, 1964, approximately twenty-eight years earlier. Accordingly, the statutory presumption does not apply. In light of plaintiffs' evidence of the invalidity of the registration certificate held by Jones, the Court finds the certificates insufficient to sustain Jones' burden on summary judgment.

\*5 As noted above, Jones can have an ownership interest in *It Ain't My Fault* only if plaintiffs or their duly authorized agent assigned that interest to him by written agreement. A written agreement as-

signing interests in a copyright must clearly establish that the parties intended to transfer a copyright interest. See *Schiller & Schmidt, Inc. v. Nordisco Corp.*, 969 F.2d 410, 413 (7<sup>th</sup> Cir.1992). Jones suggests that because Johnson granted him power of attorney and authorized him to act as his agent, an issue of fact exists as to whether Johnson assigned an interest in the song to him. The Court has reviewed the Power of Attorney signed by Johnson on April 20, 1992. Nothing in the Power of Attorney or in the undated “Authorization” signed by Johnson indicates that Johnson intended to assign his interest in *It Ain't My Fault* to Jones. That document therefore does not satisfy section 404(a).

In his supplemental opposition to plaintiffs' summary judgment motion, Jones produced for the first time an alleged written agreement between Johnson and Smokey Johnson & Melder Publishing. (See Def.'s Mot. Leave Supp. Opp'n Ex. 3.) This “Song Writer(s) Contract,” dated August 1, 1964, states that Johnson assigned to Smokey Johnson & Melder Publishing all copyrights in *It Ain't My Fault*. (See *id.*) Plaintiffs assert that the contract is a forgery. (See Pls.' Mot. Rule 11 Sanctions, at 4-5.) In support, they point to numerous characteristics of the document which challenge its authenticity as a document executed in 1964. First, the document was printed on a computer laser printer and in the same type face as Jones' pleadings. Second, the document exhibits word processing features that did not exist in 1964, including justified text and a word processing file name located in the footer of the first page. Finally, both of Johnson's signatures on the document are identical. After reviewing the Songwriter(s) Contract, the Court agrees with plaintiffs that the contract is an obvious forgery. As plaintiffs observe, laser printers and personal computers did not exist in 1964. No reasonable jury could find that the proffered document is valid.

Because plaintiffs have properly supported their summary judgment motion, the burden shifts to Jones to establish the authenticity of the purported copyright assignment. See *Makedwde v. Johnson*,

1994 WL 10360, at \*3 (E.D.La. Jan. 5, 1994). Jones has presented no evidence establishing the authenticity of the Songwriter(s) Contract and has proffered no other credible evidence that Johnson assigned his copyright interests in *It Ain't My Fault* to him. Accordingly, the Court grants plaintiffs' motion for summary judgment and concludes as a matter of law that Jones does not own a copyright interest in any version, published or unpublished, of *It Ain't My Fault*.

### 3. Attorneys' Fees

Plaintiffs assert that if the Court grants summary judgment in their favor, they are entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505. Section 505 provides that in a copyright infringement claim, "the court may also award a reasonable attorney's fee to the prevailing party as part of the costs." (emphasis added). Section 505 does not apply at this time, however, because plaintiffs have not "prevailed" in their copyright infringement action against Jones. By granting plaintiffs' motion for summary judgment, the Court has declared as a matter of law that Jones does not own a copyright interest in *It Ain't My Fault*. In order to prevail in a copyright infringement action, however, plaintiffs must establish not only that they own the copyright at issue, but that the alleged infringer impermissibly copied or otherwise infringed that copyright. See *Quintanilla*, 139 F.3d at 500. Moreover, the Court notes that another defendant not a party to this motion has asserted that it owns copyright interests in the song. (See Answer of Tuff n Rumble Mgmt. d/ b/a Tuff City Records to Pls.' First Amend. Compl., dated March 20, 2000, §§ 37-55.) Because plaintiffs have not yet prevailed in this copyright infringement action, the Court denies their request for attorneys' fees under section 505.

### B. Rule 11 Sanctions

\*6 Plaintiffs also move the Court to sanction Jones on the grounds that he filed motions in opposition

to summary judgment on February 28, 2000 and March 3, 2000 in violation of Federal Rule of Civil Procedure 11. Plaintiffs assert that Jones filed the opposition motions without conducting a reasonable inquiry into the facts; that the motions are not warranted by existing law; and that Jones interposed the motions for an improper purpose, namely, harassment, delay and increase in the costs of litigation. Plaintiffs also contend that the Songwriter(s) Contract attached as Exhibit 3 to Jones' supplemental opposition motion is a blatant forgery. Jones conclusorily rejects these allegations and asserts that the Court should instead impose Rule 11 sanctions on plaintiffs and their counsel.

Although Jones appears in this case pro se, Rule 11 applies equally to attorneys and to unrepresented parties. See FED. R. CIV. P. 11(b) ("By presenting to the court ... a pleading ..., an attorney or unrepresented party is certifying ...") (emphasis added). See also *Hicks v. Bexar County, Texas*, 973 F.Supp. 653, 687 (W.D.Tex.1997), *aff'd*, 137 F.3d 1352 (5<sup>th</sup> Cir.1998) ("The Fifth Circuit has made it clear that Rule 11 applies fully and completely to actions filed by pro se litigants.") (collecting cases). The rule requires that a party initiate a motion for sanctions separately from other motions or requests and describe the specific conduct alleged to violate subdivision (b). See FED. R. CIV. P. 11(c)(1)(A). The motion "shall not be presented to the Court unless, within 21 days after service of the motion, ... the challenged ... claim is not withdrawn or appropriately corrected." *Id.* Here, plaintiffs sent Jones a letter dated March 10, 2000, warning him that they intended to seek sanctions unless he withdrew the offending motions and attaching a copy of their Rule 11 motion. (See Pls.' Mot. Rule 11 Sanctions Ex. 1.) When Jones did not withdraw his claims within 21 days, plaintiffs filed a separate Rule 11 motion with this Court. Plaintiffs clearly complied with the provisions of Rule 11(c)(1)(A). By contrast, Jones has not complied with the procedural requirements of Rule 11. Jones did not file a separate motion for Rule 11 sanctions against plaintiffs but instead included the request in his opposition to

plaintiffs' motion. The only Rule 11 motion properly before this Court, therefore, is that filed by plaintiffs.

The purpose of Rule 11 is "to deter baseless filings in district court and thus, ... streamline the administration and procedure of the federal courts." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393, 110 S.Ct. 2447, 2454 (1990); accord *Redd v. Fisher Controls*, 147 F.R.D. 128, 130 (W.D.Tex.1993). The rule applies to every pleading, written motion, or other paper submitted to the Court. See FED. R. CIV. P. 11(a); *Thomas v. Capital Sec. Servs.*, 836 F.2d 866, 875 (5<sup>th</sup> Cir.1988) (*en banc*). When an unrepresented party submits a pleading to the court, he certifies to the best of his knowledge, information, and belief that: (1) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or increase in the costs of litigation; (2) the pleading is warranted by existing law or a good faith argument for modification of existing law; and (3) the litigant has conducted a reasonable inquiry into the factual allegations and denials which support the pleading. See FED. R. CIV. P. 11(b); *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1023 (5<sup>th</sup> Cir.1994) (Fifth Circuit interprets Rule 11 as imposing three affirmative duties upon attorney or litigant when he signs a pleading, motion or other document); *American Airlines, Inc. v. Allied Pilots Ass'n*, 968 F.2d 523, 529 (5<sup>th</sup> Cir.1992) (three ways pleading may violate Rule 11: inadequate legal support, inadequate factual support, and improper purpose) (citation omitted). The Court applies an objective, not subjective, standard of reasonableness to determine whether a party has violated these duties. See *Childs*, 29 F.3d at 1024 (citing *United States v. Alexander*, 981 F.2d 250, 252 (5<sup>th</sup> Cir.1993); *Thomas*, 836 F.2d at 873). The conduct of the attorney or unrepresented party is assessed at the time he submitted the pleading or motion. See *Thomas*, 836 F.2d at 875 (citing FED. R. CIV. P. 11 Adv. Comm. Note).

\*7 Jones has clearly violated Rule 11. First, Jones'

allegations that a genuine issue of fact exists as to his ownership of a copyright interest in *It Ain't My Fault* were not warranted by existing law or the extension, modification, or reversal of existing law. In determining whether counsel has made a reasonable legal inquiry, the Court considers the following factors: (1) the time available to the attorney; (2) the plausibility of the legal view contained in the document; and (3) the pro se status of the litigant; and (4) the complexity of the legal and factual issues raised. See *Thomas*, 836 F.2d at 875-76. The Court granted Jones a seven-day extension of time to file his original opposition to plaintiffs' summary judgment motion and then permitted Jones leave to supplement his opposition. Jones thus had sufficient time to make a reasonable inquiry into the applicable law. Further, the legal issue here is not particularly complex and was set forth simply in plaintiffs' motion for summary judgment: Jones can have a copyright interest in *It Ain't My Fault* only if plaintiffs transferred that interest to him by virtue of a written assignment. Jones nevertheless cited no legal authority in support of his copyright ownership allegations. Instead, he suggested that the Power of Attorney granted to him by Johnson and/or the certificates of copyright registration that he received from the U.S. Register of Copyrights raise an issue of fact as to his ownership. This argument is wholly without legal support, as discussed above. Moreover, although the Court considers the special circumstances of Jones' pro se status, those circumstances do not weigh in his favor here. A review of the Court's records reveals that Jones has been a party to at least two other copyright infringement actions in this district. See *Davis v. Jones*, 1994 WL 382571 (E.D.La. July 18, 1994); *Makedwde v. Johnson*, 1994 WL 10360 (E.D.La. Jan. 5, 1994). Indeed, in *Makedwde*, Jones filed a copyright infringement action, claiming to have acquired rights in the song *Carnival Time* by a written assignment. 1994 WL 10360, at \*1-2 (E.D.La. Jan. 5, 1994). The court granted summary judgment against Jones, finding that he failed to rebut defendant's evidence that he forged defendant's signature on the alleged songwriter's contract. See *id.* at \*2-3. See

also *Davis*, 1994 WL 382571, at \*1 (granting partial summary judgment against Jones, rejecting his claim to copyright ownership pursuant to certain songwriting contracts). Jones' prior experience clearly demonstrates that he is aware of the legal elements required to properly obtain ownership of a copyright, in particular, the necessity of a valid written assignment. All of these factors indicate that Jones submitted the opposition motions at issue without adequate legal support as required by [Rule 11](#).

Jones also violated [Rule 11](#) by failing to conduct a reasonable inquiry into the facts underlying his motions and by interposing those motions for the purposes of delay, harassment, and increasing the costs of litigation. The evidence reveals that the Songwriter(s) Contract that Jones attached as Exhibit 3 to his supplemental opposition is a forgery of a 1964 document. Presenting a forged document to the Court is certainly not reasonable and warrants the imposition of sanctions under [Rule 11](#). See *Bout v. Bolden*, 22 F.Supp.2d 653, 658 (E.D.Mich.1998) (awarding [Rule 11](#) sanctions against plaintiff who submitted forged memoranda as exhibits to summary judgment opposition). Further, Jones asserts that the affidavit properly filed by Johnson in support of plaintiffs' summary judgment motion is the product of fraud and perjury. (See Memo. Supp. Opp'n Summ. J., at 6.) Jones offers absolutely no factual support for this allegation and a review of the record reveals none.

**\*8** The following excerpt from Jones' opposition memorandum demonstrates the inadequate factual inquiry and improper purpose underlying the pleading:

... Johnson's affidavit as you can see is fraud, perjury and corruption by the attorney that prepared this fraudulent and corrupted document for Joseph Johnson to sign. Packard Phillips being Joseph Johnson's illegally will be proven to be responsible including Mark J. Davis and Gregory P. Eveline. This is nothing but a vicious scam ... in order to Packard Phillips, Wardell Quezergue's

attorney to ... commit a crime of corruption doing business as usual ... misusing and abusing the unfortunate, uneducated black artists.

Your Honor, you may want to ask Joseph Johnson if he has a mental problem.... This is a vicious act of stealing all his rights and interest at high noon.

(Memo. Supp. Opp'n Summ. J., at 6-7.)

The inclusion of scandalous or indecent matter is itself a strong indication that an improper purpose underlies a motion. See [FED. R. CIV. P. 11](#) Adv. Comm. Notes. The Fifth Circuit has held that “[a]busive language towards opposing counsel has no place in documents filed with our courts; the filing of a document containing such language is one form of harassment prohibited by [Rule 11](#).” *Coats v. Pierre*, 890 F.2d 728, 734 (5<sup>th</sup> Cir.1989). See also *Redd*, 147 F.R.D. at 132-33 (imposing [Rule 11](#) sanctions when plaintiff's counsel made unsubstantiated and disparaging remarks in motion against defense counsel). Not only does Jones make disparaging remarks about plaintiffs and their counsel, but he also attacks the integrity of this Court:

Attorney Gregory P. Eveline should be sanctioned along with Wardell Quezergue for fabricating lies and misleading the Honorable Judge Sara Vance and Magistrate Judge Africk.... From my experience this business is usual for these attorneys I have dealt with in New Orleans; they are trickery misusing and abusing citizens, and not being respectful to the code of ethics, and in many cases, their behavior is tolerated by a percentage of the judges in our judicial system, including the local parish and federal judges in the state of Louisiana.

(Memo Opp'n Summ. J., at 15.) Given the compelling evidence of fraud, the unsubstantiated factual allegations, and the abusive language used by Jones, the Court finds that Jones did not conduct a reasonable factual inquiry in this case and that he filed his motions for an improper purpose.



For the foregoing reasons, the Court concludes that [Rule 11](#) sanctions are appropriate here. Plaintiffs assert that the Court should sanction Jones by ordering him to pay attorneys' fees in the amount of \$1,250; assessing punitive sanctions against him in the amount of \$10,000 per counsel; striking Jones' motions; declaring the Songwriter(s) Contract a forgery; requiring Jones to immediately retain counsel; and barring Jones from filing further documents in this case without an attorney or leave of court.

\*9 Once a court finds that counsel or an unrepresented party has violated [Rule 11](#), the Court has discretion to impose an appropriate sanction. See [FED. R. CIV. P. 11\(c\)](#). Although the district court has broad discretion in fashioning an appropriate sanction, the sanction imposed should be the "least severe sanction" adequate to deter future violations of [Rule 11](#). See *Merriman v. Security Ins. Co.*, 100 F.3d 1187, 1194 (5<sup>th</sup> Cir.1996); *Thomas*, 836 F.2d at 877. The purpose of [Rule 11](#) sanctions is to deter rather than to compensate. See [FED. R. CIV. P. 11](#) Adv. Comm. Notes. Sanctions may be monetary or nonmonetary and may include striking the offending paper. See *id.* The rule expressly provides that a court may also award the movant some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the [Rule 11](#) violation. See [FED. R. CIV. P. 11\(c\)\(2\)](#). See *Hicks*, 973 F.Supp. at 689 (amount of [Rule 11](#) sanctions must be limited to those expenses actually and directly caused by the filing of the pleading found to violate [Rule 11](#)) (citing *Jennings v. Joshua ISD*, 948 F.2d 194, 199 (5<sup>th</sup> Cir.1991); *Bogney v. Jones*, 904 F.2d 272, 274 n. 2 (5<sup>th</sup> Cir.1990)).

In determining whether to impose a sanction, the court should consider

[w]hether the improper conduct was willful, or negligent; whether it was a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation pro-

cess in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants.

[FED. R. CIV. P. 11](#) Adv. Comm. Notes. Considering all of these factors, the Court finds that a monetary sanction in the amount of plaintiffs' reasonable attorneys' fees and costs is necessary to deter future misconduct by Jones. In so concluding, the Court notes that the Fifth Circuit has imposed sanctions against Jones for filing frivolous pleadings in a prior copyright infringement action. In *Makedwde*, discussed above, Jones appealed the dismissal of his case twice. The Fifth Circuit dismissed Jones' original appeal as frivolous and remanded for determination of sanctions, which the district court imposed against Jones in the amount of \$16,797. When Jones again appealed to the Fifth Circuit, that Court recognized that "the previous imposition of attorney's fees was insufficient to deter frivolous filings," and thus imposed sanctions of double costs and attorney's fees against Jones for filing a frivolous appeal. (See Minute Entry dated July 29, 1999, Civ. Action No. 91-879, citing Fifth Cir. Op. at 4.) In addition to engaging in similar conduct in other litigation, Jones' actions do not represent an isolated event in this case. On May 27, 1999, Jones filed a motion to dismiss plaintiffs' claims for lack of personal jurisdiction, improper venue, insufficient service of process. Jones attached a one and one-half page memorandum to the motion, which referenced absolutely no law or facts to support his allegations. Nevertheless, the filing of this wholly unsubstantiated motion required a response by plaintiffs as well as an investigation by this Court, which resulted in a six-page opinion denying Jones' motion. The Court has already discussed the implications of Jones' pro se status and finds that, after weighing all of the factors outlined above, it does not militate against imposing monetary sanctions here.

\*10 Following the 1993 amendments to [Rule 11](#), courts have construed the rule as permitting the recovery of reasonable attorney fees and costs incurred in defending the motion found to have violated [Rule 11](#), as well as those incurred in pursuing the [Rule 11](#) sanctions themselves. See [FED. R. CIV. P. 11\(c\)\(1\)\(A\)](#) (“the court may award to the party prevailing on the motion the reasonable expenses and attorney’s fees incurred in presenting or opposing the motion”); [Margolis v. Ryan](#), 140 F.3d 850, 854-55 (9<sup>th</sup> Cir.1998) (noting that December 1, 1993 amendment to [Rule 11](#) specifically allows a district court to include the costs associated with sanctions proceedings); [In re Tutu Wells Contamination Lit.](#), 120 F.3d 368, 388 (3d Cir.1997) (costs associated with the sanctions proceedings themselves can be recoverable) (citations omitted). Here, plaintiffs have submitted an affidavit detailing the attorneys’ fees incurred in researching and preparing their [Rule 11](#) motion. (See Pls.’ Mot. [Rule 11](#) Sanctions Ex. 3, Eveline Aff.) The plaintiffs aver that they have expended \$1,250 in attorneys’ fees, representing 10 hours of work at \$125 per hour. The Court finds this amount reasonable under the circumstances. Plaintiffs are also entitled to costs, which they have not yet verified. The Court further notes that, in addition to filing a [Rule 11](#) motion, plaintiffs filed a memorandum in reply to Jones’ opposition motions on March 9, 2000. Because the filing of plaintiffs’ reply was directly caused by Jones’ [Rule 11](#) violation, and plaintiffs have not included the fees incurred in filing this reply, the Court will allow plaintiffs to submit a statement of fees and costs relating thereto.

The Court orders Jones to pay plaintiffs \$1,250 in attorneys’ fees to plaintiffs’ counsel within ten days. Further, plaintiffs shall submit to the Court within five days a properly authenticated affidavit establishing the amount of their expenses related to the [Rule 11](#) motion and their attorneys’ fees and expenses incurred in filing their March 9<sup>th</sup> reply memorandum. Once the Court determines the reasonable amount of these fees and expenses, it will issue an order directing Jones to pay the additional

monetary sanctions within ten days.

After considering Jones’ fraudulent abuse of the judicial process both in this case and in other cases in this district, the Court recognizes that a monetary sanction alone is unlikely to deter him from filing future frivolous pleadings. Accordingly, the Court also enjoins defendant from filing any paper related to this case with this Court or its personnel until he pays the sanctions associated with plaintiffs’ [Rule 11](#) and reply motions in full. See [United Markets Int’l, Inc. v. Legg](#), 24 F.3d 650 (5<sup>th</sup> Cir.1994) (affirming district court decision to bar party from filing further pleadings until he paid sanctions levied against him for vexatious litigation). See also [Support Systems Int’l, Inc. v. Mack](#), 45 F.3d 185, 186 (7<sup>th</sup> Cir.1995) (directing clerks of all federal courts in circuit to return unfiled any papers litigant attempted to file until he pays sanctions in full); [Jean v. Dugan](#), 29 F.Supp.2d 939, 941-42 (N.D.Ind.1998) (same). The Court further orders the opposition memoranda Jones submitted on February 28 and March 3, 2000, and the Songwriter(s) Contract attached as Exhibit 3 to the March 3<sup>rd</sup> memorandum, stricken from the record. The Court also notes that even after plaintiffs had notified him that they intended to seek [Rule 11](#) sanctions based on the contents of his first two opposition motions, Jones filed a third reply motion and memorandum in opposition to plaintiffs’ summary judgment motion on March 22, 2000. Because the March 22<sup>nd</sup> motion restated the same factually and legally unsubstantiated allegations as the prior motions, and attached the fraudulent Songwriter(s) Contract, the Court also orders that motion, and its supporting memorandum and exhibits, stricken from the record. The Court further orders that defendant is precluded from asserting any new argument or defense based on a claimed ownership interest in the copyright at issue. See [FED. R. CIV. P. 11](#) Adv. Comm. Notes (“This restriction does not limit the court’s power to impose sanctions or remedial orders that may have collateral financial consequences on a party, such as dismissal of a claim, preclusion of a defense, or preparation of amended pleadings.”).

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*Cf. Pope v. Federal Express Corp.*, 974 F.2d 982, 984 (8<sup>th</sup> Cir.1992) (affirming dismissal of suit when district court found plaintiff submitted manufactured evidence and perjured testimony and violated Rule 11) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S.Ct. 2123, 2133 (1991)); *Coombs v. Rockwell Int'l Corp.*, 927 F.2d 486, 488 (9<sup>th</sup> Cir.1991) (dismissal for using falsified document as evidence is appropriate sanction under Rule 11 or court's inherent power) (citations omitted); *Pressey v. Patterson*, 898 F.2d 1018, 1021 & 1021 n. 2 (5<sup>th</sup> Cir.1990) (default judgment or dismissal sanctions evaluated under same standard and appropriate in extreme circumstances when lesser sanctions not adequate and party acts willfully or in bad faith).

\*11 The Court finds no authority for ordering punitive damages under Rule 11 and denies plaintiffs' request for such sanctions. Plaintiffs cited *Robeson Defense Committee v. Britt* for the proposition that punitive sanctions in the amount of \$10,000 per counsel have been awarded in a Rule 11 case. 132 F.R.D. 650 (E.D.N.C.1989), *aff'd in part and vacated in part sub nom., In re Kunstler* 914 F.2d 505 (4<sup>th</sup> Cir.1990). *Robeson* does not support plaintiffs' request, however. There, the Fourth Circuit vacated the sanction imposed by the district court, noting that "the amount of a monetary sanction should always reflect the primary purpose of deterrence" and "Rule 11 should not blindly be used to shift fees." *Kunstler*, 914 F.2d at 522-23. Because the plain language of Rule 11 indicates that reasonable attorney fees should be limited to those fees directly caused by the offending violation, the Court will not impose punitive sanctions here.

Finally, the Court denies plaintiffs' requests that the Court require Jones to immediately retain counsel and prohibit him from filing future pleadings absent this Court's approval.

### III. CONCLUSION

For the foregoing reasons, the Court grants plaintiffs' motion for summary judgment. The Court

also grants plaintiffs' motion for Rule 11 sanctions and sanctions Jones as indicated above. The Clerk of Court is instructed to return, unfiled, any pleadings tendered by Joe Jones in this case until he has satisfied all outstanding awards of sanctions.

E.D.La.,2000.

Johnson v. Tuff N Rumble Management, Inc.

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