

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

JEFFREY ATKINS p/k/a JA RULE,  
SLAVERY MUSIC, IRVING LORENZO  
p/k/a IRV GOTTI, and DJ IRV PUBLISHING,

11 CIV. 3976 (AKH)  
ECF Case

Plaintiffs,

-against-

DECLARATION OF  
JAMES P. CINQUE IN  
SUPPORT OF MOTION  
TO DISMISS THE COMPLAINT

RICH KID MUSIC, INC. and RHONDO  
ROBINSON,

Defendants.

-----X

JAMES P. CINQUE duly declares the truth of the following statements under  
penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a member of Cinque & Cinque, P. C., attorneys for defendants, and submit  
this declaration in support of their motion to dismiss the complaint in this action.

2. Annexed hereto as Exhibit "A" is a copy of the complaint filed June 13, 2011.

**THE CLAIMS ARE TIME-BARRED**

3. Plaintiffs assert two claims for relief: one for fraud and one for conversion.

Both claims arise out of the alleged receipt by defendant Rich Kid Music of music  
publishing royalties received from Universal Music in 2002 (the royalty statements at  
issue are annexed as Exhibit A to the complaint).

4. As set forth in the accompanying memorandum of law, the statute of limitations

for a fraud claim is the greater of six years from the date the cause of action accrued or two years from the time plaintiffs discovered the fraud or could with reasonable diligence have discovered it. The statute of limitations for a conversion claim is three years.

Clearly, as the monies at issue were allegedly received by Rich Kid Music in 2002 the conversion claim asserted in June 2011 is barred by the statute of limitations.

5. In order to attempt to make the fraud claim appear timely, plaintiffs allege in paragraph 27 that:

The Plaintiffs did not become aware of this fraudulent conduct until in or around November 2010 and the only reason that they did become aware of the Defendants' actions is because the Plaintiffs' counsel obtained the aforementioned documents from Universal in connection with an unrelated matter on behalf of another client (Ex. A).

Plaintiffs further allege in paragraph 28 that they "had no reason or opportunity to know that the defendants had committed these fraudulent acts."

6. Both of these statements are proven false by allegations in three prior complaints which plaintiffs' attorneys have filed against defendants, in which plaintiffs' attorney admitted knowledge of the alleged scheme by January of 2009, and by the admission that it was impossible that plaintiffs would not be owed royalties for sales of recordings containing their songs.

**(A) The Prior Complaints Against Defendants**

7. Plaintiffs' attorneys have filed three similar actions against defendants since

2009, and the allegations set forth in these pleadings establish not only that plaintiffs should have known that they were not receiving royalties from Universal Music Canada, but also that plaintiffs' attorneys knew of the allegedly fraudulent activity of defendants more than two years prior to the commencement of this action.

**(B) Plaintiffs' Attorneys Knew of the Alleged Fraud by January of 2009**

8. In the three prior proceedings against defendants commenced by plaintiffs' attorneys they allege on behalf of other clients that they became aware of defendants' allegedly fraudulent activities by January of 2009. In the first complaint (Jermain Baxter p/k/a Nature and Black Ed Music Publishing v. Rich Kid Music, Inc. and Rhondo Robinson, S.D.N.Y. Docket #: 09 CIV. 02977, filed March 26, 2009, Exhibit "B"), plaintiffs allege in paragraph 24 that:

In effect, Defendants left Plaintiffs in the dark about who was using their songs, how they were mixed and in what albums they were being exploited, which facts Plaintiffs learned only on or about December of 2008 (emphasis added).

In paragraph 37 plaintiffs' counsel alleged:

In or around December of 2008, Plaintiffs became aware of the fraudulent acts committed by Defendants and the continued royalty payments being forwarded to Defendants by the record labels (which included Universal Music Group, as alleged in paragraph 22 of the complaint) (emphasis added).

9. In the second complaint, Earl Simmons a/k/a DMX and Boomer X Publishing v. Rich Kid Entertainment 1, Rich Kid Music, Inc., 27 Red Music and Rhondo Robinson (N.Y. County Supreme Court Index #: 105405/10, filed April 26, 2010, Exhibit “C”) plaintiffs allege in paragraph 28 that:

In effect, Defendants left Plaintiffs in the dark about who was using their songs, how they were licensed, and in what albums they were being exploited, which facts plaintiffs learned only on or about in January of 2009, and which plaintiffs are still unclear on and need to engage in meaningful discovery to determine (emphasis added).

In paragraph 39 of this complaint plaintiffs allege:

In or around January of 2009 plaintiffs became aware of the fraudulent acts committed by defendants through another copyright administrator (emphasis added).

10. In the third complaint brought against defendants by plaintiffs’ attorneys, Anthony Cruz and Life’s A Bitch Publishing v. Rich Kid Entertainment 1, Rich Kid Music, Inc. and Rhondo Robinson (N.Y. County Supreme Court Index #: 113692/10, filed October 19, 2010, Exhibit “D”) plaintiffs allege in paragraph 26:

In effect, Defendants left Plaintiffs in the dark about who was using their songs, how they were licensed, and in what albums they were being exploited, which facts Plaintiffs learned only on or about in January of 2009, regarding which Plaintiffs are still unclear and need to engage in meaningful discovery to determine (emphasis added).

11. As plaintiffs' attorneys knew of defendants' allegedly fraudulent activity by January of 2009 the complaint herein filed in June of 2011, more than two years later, is untimely.

**(C) Plaintiffs Should Have Known of the Non-Payment of Canadian Royalties**

12. It was no secret that recordings embodying plaintiffs' musical compositions were being sold and that mechanical royalties were due on sales of these recordings. Indeed, paragraph 10 of the complaint (Exhibit "A") alleges that an album entitled "Pain Is Love" was released by Universal Music in 2001, and paragraph 12 of the complaint alleges that mechanical royalties were owed by Universal based upon sales of the album. Plaintiffs undoubtedly knew or at a minimum with reasonable diligence should have known that they were not receiving mechanical royalties for Canadian sales. Indeed, in the prior complaints against defendants by plaintiffs' counsel he admitted that it was impossible for a songwriter not to know that royalties were owed on such sales. For example, in the Simmons complaint (Exhibit "C") plaintiffs allege in paragraph 26:

Defendants presented themselves to various record labels, both foreign and domestic, to issue false licensing agreements, including, but not limited to, Sony BMG Music Entertainment, Universal Music Group, Warner Music Group, Jive Records and MCPS United Kingdom, thereby allowing Defendants to collect foreign royalties generated by the catalog (emphasis added).

In paragraph 33 plaintiffs allege that:

it would not be possible for Plaintiffs not to be owed mechanical royalties as they are subject to different statutory rates and are earned each time a song is sold.

13. Similarly, in the Cruz complaint (Exhibit “D”) plaintiffs allege in paragraph 25 that:

Defendants fraudulently presented themselves to various record labels and performing rights societies, both foreign and domestic, including but not limited to, Sony BMG Music Entertainment, Universal Music Group, Warner Music Group, E 1 Entertainment and MCPS United Kingdom as acting on behalf of the Plaintiff per the Agreement, thereby allowing Defendants to collect for themselves foreign royalties generated by the catalog without the knowledge of the Plaintiff or those third party record labels (emphasis added).

In paragraph 31 plaintiffs allege:

it would not be possible for Plaintiffs not to be owed mechanical royalties as they are subject to different statutory rates and are earned each time a song is sold.

14. As mechanical royalties are due upon sales of recordings, and as the Album at issue in this action was openly and notoriously sold by Universal Music Canada, plaintiffs should have known in 2002 that they were not receiving royalties for sales of the recordings. Accordingly, the fraud claim is time-barred since plaintiffs should have

known that royalties were due them in 2002 prior to June 2009 (two years before the commencement of this action).

**(D) The Jurisdictional Threshold Has Not Been Established**

15. In paragraph 26 of their complaint (Exhibit "A"), plaintiffs allege that defendants received a total of \$57,034.00 from Universal:

Upon information and belief, and according to the royalty statements plaintiffs' counsel obtained from Universal, the amount of money paid to date by Universal to defendants with respect to each of the Songs is: "Lost Little Girl" - \$21,212.00; "Worldwide Gangsta" - \$13,261.00; "Down Ass Bitch" - \$13,735.00; "Shakin' And Ridin'" - \$8,826.00. See Exhibit A.

As the amount in controversy is less than \$75,000.00 the complaint should be dismissed.

16. It is respectfully requested that defendants' motion to dismiss the complaint be in all respects granted.

Executed at New York, New York on August 30, 2011

  
\_\_\_\_\_  
JAMES P. CINQUE